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No. 82-708

IN THE

Supreme Court of the United States

October Term, 1982

SUMMA CORPORATION,
Petitioner,

v.

STATE OF CALIFORNIA ex rel. STATE LANDS COMMISSION and CITY OF LOS ANGELES,
Respondents.

On Writ of Certiorari to the Supreme Court of California

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED
OCTOBER 22, 1982
CERTIORARI GRANTED MARCH 21, 1983

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NOTE: The documents contained in this Joint Appendix are reproduced literally with all spelling, grammatical and other errors. Many of the original documents were handwritten, and portions of them were difficult to decipher.

Espediente and Grant for Rancho La Ballona

1839

Espediente

Instituted by the Citizens Agustin and Ignacio Machado, Felipe and Tomas Talamantes in their petition for a place called

Ballona

184

Sr. Prefect ad interim of this District

Agustin Machado, Felipe Talamantes Ignacio Machado and Tomas Talamantes before Y. H. with all due respect and in terms most conformable to law present ourselves and say: That it is about the space of 18 or 19 years that we have provisionally occupied with our grazing stock, houses and other interests, the place called "Pass of the Waggons" (Paso de las Carretas) but more generally known by the name of the Ballona, and wishing to secure in the best possible mode, the maintenance of our increased families, as there is no one who can better represent our rights, we beseech of Y. H. to be pleased to grant us in right of property the said place, being that which the duly accompanying diagram represents more intelligently, wherefore

Of Y. H. we humbly ask to deign to grant this our petition, expressing that of your efficient and known goodness, you will concede the favor, which we implore, for thus it is justice. We swear it necessary.

We likewise pray you will admit this on common paper for want of the sealed in this city.

Angeles Sept. 19th 1839 –

We know not how to write –
(or to sign it)
[endorsed on the same]

Angeles Sept. 20th 1839 –

Inform the Il. city council of what is contained in the petition, with citation to the adjoining land claimants.

Tapia –

Angeles 28th 1839

Account of this Espediente having been given to the Illustrious City Council of this city in session of to-day, they resolved to commit it to the committee on unoccupied land that, upon previous citation of the adjoining land-claimants, they may produce the report which is asked by the Señor Prefect.

Antonio Machado

Narciso Botello
Secretary

Illustrious City Council

The committee on unoccupied lands to examine the land referred to in the present Espediente say: That it alone is occupied with a stock of large cattle and horses and small cattle, vineyards and houses, and sowing grounds, all pertaining to the petitioners who have had possession of it for the period that they themselves express, in virtue of which the committee are of opinion that the respective possession of property may be granted; for they find no obstacle; and this is the report which they make in virtue of the marginal decree.

Ang. October 12th 1839.

Juan C. Vejar

Januario Abila

Angeles Dec. 12th 1839

Account of the preceeding report having been given to the Illustrious City Council, it is agreed that the report be granted which the Sr. Prefect asks in favor of the petitioners

Antonio Machado
Prest^e ad interim

Ignacio Coronel
Secretary

Angeles October 15th 1839

Return the present Espediente to the Illustrious City Council for the purpose that they may express whether or not they approve of the report of the respective committee, suggesting that this Prefecturate has not asked a report in favor of the petitioners, as it is expressed in the former decree

Tapia

Narciso Botello
Secretary

Angeles October 19th 1839 –

The Illustrious City Council in session of to-day approve of the decision (or report) of the committee stamped on the former petition; and with this, the mistake remains corrected which was made in the decree of the 12th inst.

Antonio Machado
Presd^t ad interim

Ign.^o Coronel
Secy

M. E. Sr. Governor:

The Prefecturate of this District having been advised of the preceeding reports, believes that it is well to grant the solicitations of the petitioners, if thus it be of the superior pleasure of Y. E. who has the qualifications necessary to be attended to, and being possessors for many years of the place which they mention.

Tiburcio Tapia

Narciso Botello
Secy

Monterey Nov. 27th 1839

Having seen the petition with which this Espediente commences, the report of the Sr. Prefect of the 2nd District, and that of the Illustrious City Council of the City of Los Angeles, with all the further steps which the present has taken, and that it all agrees, in conformity with the laws and regulations on the subject, I hereby grant to the citizens Agustin and Ignacio Machado, Felipe and Tomas Talamantes, the land known by the name of the Ballona, bounded on the West by the ranch of the citizen Policapio Higuera, on the North by that of the Citizen A. Ignacio Abila and on the South by that of the Sr. José Sepulveda, and they shall be subject to what may result concerning the bounds of the municipality of the City of Los Angeles. Issue the corresponding dispatch, take record in the proper book, the same in the Book in the Prefecturate of the Second District.

The Sr. Dn. Juan B. Alvarado, Governor Constitutionally of the Department of the Californias; thus I commanded, decreed, and signed it, which I attest.

Alvarado

Manuel Jimeno
Secretary

Seal of the First Class — Six Dollars
Qualified provisionally for the maratime Custom House for the years 1839 & 1840.

Alvarado Antonio Maria Osio

Juan B. Alvarado. Constitutional Governor of the Department of the Californias.

Whereas the Srs. Agustin & Ignacio Machado, Felipe & Tomas Talamantes, have solicited for their personal benefit and that of their families the land known by the name of the "Ballona" bordering at the East with Mr. Policapio Higuera, at the North with Mr. Alimis, at the West with Mr. Antonio Ignacio Abila and at the south with Mr. Sepulveda they having previously performed the proceedings and necessary enquiries, according to what is agreeable to the laws and regulations. Exercising the powers that are conferred upon me in name of the Mexican Nation I have resolved to grant them the land above mentioned under the conditions following:

1. That they shall be subject to the rule which ought to be adopted with respect to the determining of the boundary in the lands of the City of Los Angeles lest it should result to be comprehended in them.

2nd. They may enclose it without prejudice to the traversing roads and servitudes: they shall farm it freely and exclusively, destining it to that use or cultivation, that may most serve them

3. The respective judge shall cause the land to be measured in conformity with the regulations and shall declare the possession of it to the interested parties

4. If the land shall not be comprehended in those which the first article suggests, the parties interested may repair to the Government for a confirmation of their property.

Therefore I order that there be taken in the proper book, and be delivered to the parties interested for their protection and further ends

Given at Monterey the twenty seventh of November. One thousand eight hundred and thirty nine.

Juan B. Alvarado

Manuel Jimeno
Secretary of the despatch

Let account of this despatch be preserved in the book of entries concerning the adjudication of Public lands at page 13th

Jimeno

His Excellency the Governor has ordered that account of this despatch be taken in the prefecturate of the 2nd District.

Jimeno

Angeles December 9th 1839

Let account be taken of this Title in the proper book of this Prefecturate at page 1st by virtue of which the parties interested may repair to one of the Justices of the Peace of this City soliciting the corresponding possession.

Tapia
Narciso Botello
Secretary

Mexican Diseño (Map)

Judicial Possession of Rancho La Ballona (1839)

Señor Judge of the 2nd of the Instances

Agustin, Ignacio, Machado, Felipe and Tomas Talamantes neighbours of this Demarcation before Your Honor in all due form of Laws, say, That we respectfully enclose the title of property in the ranch called the Ballona, granted by the Superior Government —, in order that you may be well desposed to give us the corresponding possession conformably with the title or dispatch, which accompanies —

Postscript — We supplicate that you may be pleased to accede to this our solicitude, in that it may be received with favor: we take the necessary oath xc. Be pleased to admit this on common paper, for want of the proper sealed paper.

Angeles December 30th 1839.

Not knowing how to sign this we request Francisco I. Alvarado to do it for us at the city. By request of the parties interested.

Francisco I. Alvarado

Angeles December 30th 1839

Conformably to the superior decree of this Prefecturate and acceding to the request of the parties interested, let it be proceeded to give the proper possession. Thus I the judge who subscribes, decree and sign according to the law.

Manuel Domingues

Assis
Ignacio Coronel

Assis
Agustin Olivera

In the City of Los Angeles of the Department of the Californias, at the thirty first day of the month of December of One Thousand Eight Hundred and Thirty Nine. Condescending to the Petition of the Sirs Agustin and Ignacio Machado, Felipe and Tomas Talamantes and the Decree of the Prefect *ad interim* of this District, dated the 9th of the present: To the end that due possession be given them, the above named Machado and Talamantes of the site and ranch called Ballona which they have actually occupied with their chattles of the plain and other ampliations granted by His Excellency the Governor of this Department which title or original despatch they have presented to this court: Let it be passed by me and my assistant witnesses to the site before mentioned: and let it be proceeded to give the possession indicated, previous citation having been made to the adjoining neighbours, for the purpose of regulating the title referred to, which has been conferred by the Departmental Government, dated the twenty seventh of November of the present year. I, Manuel Domingues Justice of the Peace of the 2nd Instance order and subscribe with the assisting witnesses according to law, on this common paper, for want of the proper sealed paper which I attest

Manuel Domingues — Ignacio Coronel

Francisco I. Alvarado of Assistance

On the same day, month, and year I the judge who subscribes, summoned the adjoining neighbours Don Palicarpio Higuera, Don Agustin Ignacio Abila, Don Francisco Sepulveda and Don Maximo Olives explaining to them the object for which I had directed myself to the place of the Ballona, to wit: to remeasure and put in its possession the Snrs. Augustin and Ignacio Machado, Felipe and Tomas Talamantes, which fact I put down for inspection and which I authorize and sign with the assistance according to law.

Manuel Domingues

Assistance — Ass.

Ignacio Coronel — Fran.co I. Alvarado

On the same day month and year, being at the foot of a cotton-wood tree, which is at a long distance from the house where dwell the Sirs Machado and Talamantes. I appointed two official cord-bearers, one was Marcelo Rodona, and the other Policarpio Higuera, to whom I caused to be made known their appointments, which they accepted under oath which they agreed to, offering to discharge faithfully their trust, which I authorise and sign with the witnesses of my assistance according to law — Manuel Dominguez-Ignacio Coronel — Francisco Ianares Alvarado assistant cordbearer, Manuel Rodena. The other cordbearer knows not how to write.

On the same day month and year, being at the foot of a cotton wood tree at a long distance from the House where dwell the Sirs Machado and Talamantes to verify to the aforenamed persons of the place referred to — the Ballona, all the prior requisites of the law were commenced; and being in presence of my witnesses of assistance, and the official Cord-bearers I caused a cord to be measured which contained One Hundred varas, fixing to its extremities stakes of wood, after observation and calculation with an inspection of the title, by my order the cord was established from the cotton-wood tree, to which cuts of a hatchet were given, to serve for a land mark, a direction to the east were measured and counted. Seven thousand eight-hundred and thirty five varas terminating at a little pole bridge, which was fixed for a land mark, at which point was the adjoining neighbour Don Policarpio Higuera, he not having manifested any objection it was given for a perpetual measurement:

From thence the cord was stretched a direction towards the south, and were measured and counted nine thousand and eight hundred varas; which terminated at the mouth of a creek ("estero") a place which was fixed for a land mark: but when it was measured, Antonio Avila charged that this situation or place belonged to him, and having asked him for the Documents which would prove it his property, he did not present them: but

said the plat ("desino") was in Monterey for which cause it was fixed for a measurement, pursuing to stretch the cord towards the west there were measured along the sea-coast seven thousand and three hundred varas which terminated at a point called the deep Gullies ("barrancas") a situation which was fixed for a land mark.

From thence the rope was stretched in a direction towards the north, taking a course so as to strike the cotton wood tree, where the measuring was commenced, and there seven thousand and eight hundred varas, the adjoining neighbors being Sepulveda, Maccimo Alimis, the former, although he indicated that he had asked the government for a small piece of this land; but as he did not present the memorial ("Constancia") nor documents these were continued, and the measurement was given which for investigation Diligentias I set down, and which I authorize and sign with the witnesses of my assistance according to law,

Manuel Domingues

Assis Ignacio Coronel

Assis
Francisco Ianares Alvarado

It agrees with the original to which I referred which was faithfully taken, corrected and compared on five leaves of common paper, for want of the proper sealed and exists in the book of Public Instrument of the year of 1839 in evidence of the truth.

Angeles Dec. 31st 1839
Manuel Domingues

Assis
Ignacio Coronel

Assis
Vicente Sanchez

Espediente (1840)

Espediente on behalf of Messrs. Machado and Talamantes, year 1840.

To the first justice of the Peace, Agustin and Ignacio Machado, Felipe and Tomas Talamantes, state to you as best may be consistant with law: That it being subserveant to our personal interests, that the superior government explain certain doubts about the possession of our Rancho, we request that you will see fit to cause to appear in this justices court in your charge the Citizens Ricardo Bejar, Policarpio Higuera, Fran.co J. Alvarado, J. Jul. Baldes and Juan Ballestos, who will be interrogated to the tenor

1st That they say up to where the lands of the Rancho called La Ballona are comprised.

2nd How long time it is since we here occupied this site, and whether we have put thereon the necessary stock according to ordinance.

3rd That they say whether at the time of measuring the land under the juridical possession given us on 31st last, we perhaps added more land or diminished it.

This action being taken you will return us the espediente in original for purposes that may suit each of us.

Wherefore we pray that you will do as requested by us, whereby we shall receive favor, we swear xc.

You will be pleased to admit this on common paper as there is no stamped paper to be had. And as the interested parties Augustin, Ignacio, Felipe and Tomas do not know how to sign, I do so on their request.

Agustin Valverde

Angeles January 15, 1840

It having been presented and admitted in as far as is consistant with law. Let the persons named in the foregoing instance be summoned, and being formally sworn let them make declaration in accordance with the foregoing interrogatory.

Felipe Lugo, 1st Justice of the Peace and of the 1st Instance so ordered and subscribed.

Felipe Lugo

Assis Ign Coronel
Assis. Bacilio Valdez

In consequence, Ricardo Vejar, being present in person and whom I attest that I know, was sworn according to law, on which oath he promised to tell the truth about what he might know and be questioned about, and being first generally questioned, he said that his name is as above stated, that he is 33 years of age, married, a Roman Apostolic Catholic, farmer, native of San Diego and resident of this District and in accordance with the foregoing interrogation he answered,

To the 1st That about east (literally where the sun rises) from el paso de la carreta the whole opening (included) to the mouth of the Estuary, southerly from the same mouth of the Estuary along the shore of the hollows, and westerly from the hollows along all the table land to the Elm tree, and northerly from the Elm tree to the same paso de la carreta ascending above the hill.

To the 2nd. That it is 16 years since they have possessed it, and he has always seen it covered with cattle, house and corral.

To the 3rd That he is ignorant of the tenor of this question. That what he has said is the truth on the oath he has taken, which he affirmed and ratified, without adding or leaving anything, this declaration being read to him, and he did not sign as he did not know how. I Logello with my assistants did so according to law.

Erasure of "donde sale" is not valid.

Felipe Lugo

Assis
Ignacio Coronel Bacilio Valdes

In continuation, the Citizen Francisco Javier Alvarado, whom I attest that I know being previously present, he was sworn and taken in formal oath according to law, on which oath he promised to tell the truth about what he might know and be interrogated about, what he might know and be interrogated about and being questioned generally, he said his name is as above stated, that he is 33 years of age, married, a Roman Apostolic Catholic native and resident of this city, and respecting the interrogatories he answered:

To the 1st. That from el paso de la carreta for above the high hill, along all the edge of the hills to the mouth of the Estuary. Which is to east (where the sun rises) and southerly from the same mouth of the Estuary to the hollows, from the hollows to the elm tree, westerly and northerly from the Elm tree to el paso de la carreta, ascending to the hill.

To the 2nd. That according to his reccollection there will be about 18 years since he heard say this sitio de la Ballona to belong to the Machado, and that he knows they had held it with sufficient stock.

To the 3rd. That according to what he heard when he went to see the possession be given Antonio (Ignacio) Avila as bordering land owner on the eastern side first charged that they took from him land of his property; the Marchados showed him that it (arose) from a diminution of the possession they had before: but the judge, for the purpose of mediating, insisted several times in asking for the documents of A. Ignacio Avila, and as he did not present any, the Alcalde D. Manuel Domingues ordered the mensuration to be continued. The same occurred on the western side with the bordering land owner Don Franco Sepulveda, but besides that he neither

presented any document (he thinks) the Machados were stripped of something like 600 varas which remained in favor of Sepulveda the latter himself designating his old boundaries.

That what he has said is the truth on his oath, without having any thing either to add or to leave out, which he affirmed and ratified, his decleration being read to him, subscribing with me and my assistants according to law (Erasure of "poniente" is not valid.)

Felipe Lugo — Franco J. Alvarado
Ass. Ign. Coronel — Ass. Bacilio Valdez

Thereafter the Citizen Policarpio Higuera being personally present, and whom I attest that I know, was taken in oath in due legal form, on which oath he promised to tell the truth about what he might know and be interrogated about and being put the general questions he said: that his name is as above stated, that he is forty years of age, married a Roman Apostolic Catholic, a field laborer, native and resident of this city and its limits.

Respecting the interrogations he answered

To the 1st. That from the paso de la carreta, over the hill to the mouth of the Estuary that is to east, and southerly from the mouth of the Estuary to the hollows: from the hollows to the first Elm-tree, westerly and northerly from the Elm-tree to the high hill.

To the 2nd That it is about 19 years since he has seen the Machados to be in possession of the sitio called "Ballona", and he has always seen it covered with stock, buildings and farming.

To the 3rd. That as far as he knows the land as being bordering land owners towards the direction of Guicha there was cut off some five varas to the east and to the west there was cut off more than 200 varas. That what he has said is the truth on the oath he has taken, which

he affirmed and ratified without having any thing either to add or to leave out. This is his declaration being read to him and he did not sign as he did not know how.

I did so with my assistance according to law.

Assis Felipe Lugo
Ign Coronel Bacilio Valdez

In continuation, the Citizen Juan Ballona being personally present, and whom I attest that I know, he was taken in oath according to law, on which oath he promised to tell the truth about what he might know and be questioned about, and being first put the general questions he said, that his name is as above stated that he is 56 years of age, married, a Roman Apostolic Catholic, field laborer, native of S. Barbara and resident of this city, and requesting the interrogatories, he answered:

To the 1st That from el paso de la carreta to where the Estuary empties on the eastern side, and southerly from the same mouth of the Estuary along the shore to the hollows,

Westerly from the hollows up to where is an Elm tree, and northerly from the first named Elm tree to el paso de la carreta.

To the 2nd. That it is now 19 years since he knows them to be in possession of the land called La Ballona and has always been occupied with houses and country stock.

To the 3rd That he is ignorant of the tenor of the question. This he said to be the truth on his oath, which he affirmed and ratified without having any thing either to add or to leave out. This his decleration being read to him and he signed with me and my assistants according to law.

Felipe Lugo Juan Ballona
Assis Ign Coronel Felipe Catillo

Under the same date José Julian Baldes being personally present and whom I attest that I know, he was taken in oath in due legal form, on which oath he promised to tell the truth about what he might know and be interrogated about, and being first put the general questions, he said that his name is as above stated, that he is thirty years of age, married, a Roman Apostolic Catholic, a field laborer, native and resident of this city and respecting the interrogations he answered.

To the 1st That bordering on Mr. Policarpio Higuera from el paso de la carreta along the edge of Henacha to the mouth of the Estuary, and southerly from the mouth of the hollows, westerly from the hollows to the Elm-trees, and northerly to the same paso de las carretas over the hill.

To the 2nd That so long ago as he can recollect he has seen the land called La Ballona to be occupied by the Machados with habitations, corrales, and country stock.

To the 3rd That he is ignorant of the tenor of the question.

This he said to be the truth on his oath which he affirmed and ratified this his decleration being read to him and he did not sign because he did not know how: I did so together with my assistants according to law.

Felipe Lugo
Ass Ignacio Coronal
Bacilio Valdez

Angeles January 15th 1840

The testimony consequent on the foregoing interrogatories being finished and the respective action being taken let it be returned in Original to the interested parties Machados and Talamantes for such purposes as may suit them.

Thus did I Felipe Lugo 1st Justice of the Peace and of the 1st Instance order and sign together with the attesting witness, according to law:

Felipe Lugo

Assis
Ignacio Coronal

Felipe Castillo

Petition for Confirmation to the Board of Land Commissioners

To the Honorable

The United States Commissioners for the settlement of California Land Claims.

Your petitioners Agustin & Ignacio Machado, Felipe & Tomas Talamantes, residents of the County of Los Angeles & State of California, respectfully represent: that they claim as joint owners in fee-simple the ranch called "Ballona", which was granted to them, (after a peaceable and uninterrupted possession by them of 18 or 19 years under a provisional concession,) by Juan B. Alvarado, as Governor of California, and as such possessed of ample powers in the premises, by deed of grant, dated November 27th A.D. 1839, and made to them jointly and in fee simple, said ranch being bounded and described as follows:

Beginning at a Cottonwood tree, at considerable distance from the house on said Ranch, which is marked with hatchet cuts, thence running East 7.835 varas, to a little pole bridge; thence South 9.800 varas, to the mouth of a creek ("Estero") — thence West along the Sea Coast 7.300 varas, to the deep gullies ("Barrancas") thence Northerly 7.800 varas to the place of beginning; containing one league of grazing land more or less; and situated in the County and State aforesaid.

Your petitioners have held peaceable possession from the date of said grant to the present, and have fulfilled all the conditions of said deed of concession. There is no interfering claim; it has never been surveyed by the United States Surveyor for California. They will rely upon the following documentary evidence to support their claim before your Hon. Board.

1st A fac-simile copy of the Expediente and original grant marked A.

2d Copy of Judicial possession, executed by the proper municipal authority to them the 31st March, 1839, marked B.

These papers are accompanied with true translations marked 1.2: and are all filed with the Secretary of your Hon. Board. They will rely upon such further documentary evidence and parol testimony, as may serve to support their claim. And they ask that you will be pleased of your superior legal intelligence and sense of justice to confirm them in the property and possession of said claim.

and as in duly bound, &c
Agustin & Ignacio Machado
Felipe & Tomas Talamantes

By Scott & Granger
Att'ys

Oct. 2d, 1852,
Filed in Office Oct. 2, 1852
Geo. Fisher, Secy.

Decree of Confirmation, Board of Land Commissioners

Augustin Machado,	)
Ignacio Machado,	)
Felipe Talamantes and	)
Thomas Talamantes	)
vs.	)
The United States	)

In this case on hearing the proofs and allegations it is adjudged by the Commission that the claim in this case is valid, and it is therefore decreed that the same be confirmed.

The lands of which confirmation are hereby made are known by the name of "Ballona" and are bounded and described as follows to wit: Commencing at a cotton-wood tree, in which cuts of a hatchet were made, and running East seven thousand eight hundred and thirty-five varas to a little pole bridge, thence running South nine thousand and eight hundred varas to the mouth of a creek, thence along the sea coast in a Western direction seven thousand and three hundred varas, to a point called the deep gullies, thence North in a direction to strike the said cotton-wood tree, seven thousand and eight hundred varas, to the place of beginning. Reference for further description to be had to the original grant filed in this case, and to the map, which forms a part of the traced copy of the expediente marked A, and which is also filed as evidence in the case.

Alpheus Felch	)	Commissioners
Thompson Campbell	)	
R. Aug. Thompson	)	

Filed in Office Feb. 14th 1854
Geo. Fisher, Secy.

Order of Confirmation, United States District Court

United States District Court for the
Southern District of California

December Term 1855

Augustin Machado, *et al* *Appellees*	)	
	)	Case No. 123
	)	Place called
ads.	)	"Ballona"
	)	Los Angeles County
The United States *Appellants*	)	

This cause coming on to be heard at a regular Term of this Court on appeal from the final decision of the United States Board of Land Commissioners to ascertain and settle private land claims in the State of California, under an Act of Congress, approved 3d March AD 1851, on a Transcript of the decision and proceedings, and of the papers and evidence, on which such decision was founded and it appearing to the Court that said Transcript has been duly filed according to law, and counsel for the respective parties having been heard.

It is ordered, adjudged and decreed that the said decision be confirmed; and it is further ordered adjudged and decreed that the Claim of the appellees to a certain tract of land in Los Angeles County, West of the City of Los Angeles — about three leagues, and bordering on the sea shore called the "Ballona" is Valid, that said tract of land being the same now and for the last 18 or 19 years occupied by the Appellees, and bounded as follows viz.: Beginning at a Cottonwood tree at a considerable distance from the house of said Rancho, which is marked with hatchet cuts, thence running East 7835 varas to a little pole bridge thence South 9.800 varas to the mouth of a Creek (Estero) thence West along the sea coast 7.300 varas to the deep gullies (Barrancas) thence Northerly 7.800 varas to the place of beginning: refer-

ence for a more particular description being had to the grant, map and juridical possession of file in this case.

Isaac S K Ogies
US Dist. Judge

Order Vacating Order of Appeal, United States District Court

In the District Court of the United States for
the Southern District of California
Before the Hon'ble Isaac S. K. Ogies

December Term A.D. 1856

Augustin Machado *et al*
ads
The United States

No. 123
Trans. 369
"Ballona"

Upon reading the Stipulation of the Attorneys of the parties, in the above entitled cause, this day filed in Court.

It is ordered, adjudged and decreed by the Court that the order granting the appeal to the Supreme Court, be revoked, and that the decree of Confirmation heretofore made by this Court in the said cause, to wit on the 19th day of December AD 1855, be and the same is now hereby made final.

Isaac S. K. Ogies
U.S. Dist. Judge

United States America
State of California } ss.
Southern District California

I, C. Sims clk of the United States District Court for

the Southern District of California, hereby Certify the foregoing to be a full true and correct copy of the original as the same appears of file and record in my office.

In witness whereof I hereto set my hand and affix the seal of said Court this 8th April AD. 1857

C. Sims clk

by J H Coleman dep

No. 123

U.S. District Court for Southern District Cal[a]

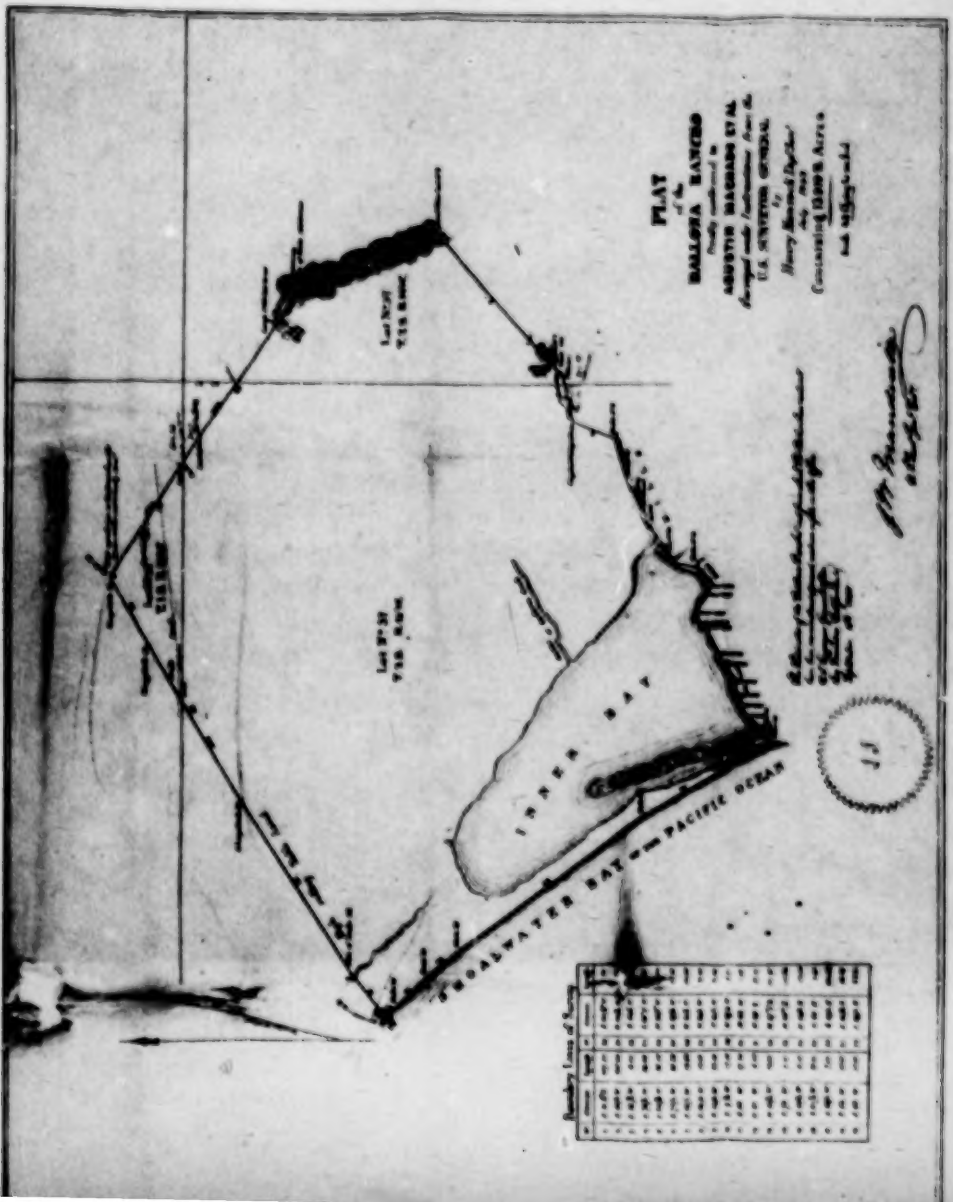
AUGUSTIN MACHADO *et al*
Appellees

ads

THE UNITED STATES
Apptts

Order to vacate order of Appeal
Filed 28 January 1857
Certified Copy
Filed April 17th 1857
U.S. Sur. Genl.

Plat of Survey of Rancho La Ballona, July 1858



Field Notes of Survey of Rancho La Ballona, Surveyed by Henry Hancock, Deputy Surveyor, July 1858

Beginning at a pile of rubble rocks, each some nine inches in diameter on a high conical hill being the North Western terminus of a range of hills on the East.

Thence according to the true meridian the variation of the magnetic needle being thirteen degrees thirty minutes East, South twenty one degrees fifteen minutes East, ascending the ridge eighty chains to the top, and along the same one hundred and seven chains, and twenty one links to a sandstone rock twenty one inches in diameter, and two small rocks Station.

Thence South, forty eight degrees, thirty minutes West, one hundred chains to the base of hills One hundred and eight chains to the base of a spur from the East, One hundred and twenty five chains to a stake on a spur from the North East, about four chains South of a lake of water, some fifteen chains long and five chains wide Station.

Thence South twenty three degrees forty five minutes West. At one chain and fifty links crosses a road course East, Four chains to a stake Station.

Thence South Seventy six degrees, thirty minutes West. At three chains enters the mouth of a Cañada, from the North East. At three chains and fifty links crosses a stream, fourteen links wide course South eight chains and eight links to a stake and charred stake at intersection with the East boundary of Township Two South, Range Fifteen West, eleven chains and fifty links North of quarter Section corner on the East boundary of Section Twenty four, Twenty five chains across a Cañada to the North base of hills. Thirty four chains and eight links to a large rock, the original corner and Station.

Thence South, twenty four degrees forty five minutes West, thirty two chains to a stake on the North West base of hills Station.

Thence South, seventy two degrees, thirty minutes West along the base of hills thirty two chains and thirty three links to a stake Station.

Thence South sixty six degrees thirty minutes West, along the North base of hills nineteen chains and sixty two links to a stake at the North East corner of a decayed corral, Station.

Thence South, sixty-four degrees fifteen minutes West, nineteen chains and fifty links to a stake at base of hills Station.

Thence South fifty four degrees, thirty minutes West, five chains to a point opposite the South East head of a Bay, twenty three chains to a stake on the West base of the hills, thirty links East of the Bay Station from which the average bearing of the North East shore of the Bay is about North West and at one hundred chains the Ballona Creek discharges itself into the Bay.

Thence South, nine degrees forty five minutes West, seventeen chains to a stake on the East base of hills six chains from the East shore of the Lake Station.

Thence South fifty three degrees West seventeen chains and thirty three links to a stake eight links East of the Bay shore at the North base of hills Station.

Thence North eighty one degrees West six chains to a stake sixty links South of the Bay shore Station.

Thence North fifty two degrees forty five minutes West fourteen chains and fifty links to a stake on the shore of the Bay Station.

Thence South seventy three degrees West eight chains to a stake Station.

Thence South, twenty eight degrees, forty five minutes West five chains to a stake fifty links from the shore of the Bay Station.

Thence South sixty degrees forty five minutes West twenty one chains to a stake Station.

Thence South eighty two degrees, thirty minutes West, seven chains to a stake on the North base of high hills, Station from which a pass in sand hills bears North eighty eight degrees forty five minutes West.

Thence South, fifty two degrees West, fifteen chains to a stake at North base of high hills Station.

Then South, eighty two degrees West ten chains to a stake at the edge of Bay Station.

Thence South, sixty degrees forty five minutes West eight chains to a stake at the North Base of high hills, and on the shore of Bay Station.

Thence South, fifty degrees, forty five minutes West nine chains to a stake Station.

Thence South forty three degrees, fifteen minutes West, at eleven chains and fifty links leaves the shore of the Bay and enters sand hills eight and ten chains wide extending far to the North West. Nineteen chains and fifty links to a stake Station at the East shore of the inlet from which the East shore of the inlet ranges North twenty degrees West. The Inlet for about one hundred and thirty chains is from eight to ten chains wide.

Thence South, forty five degrees nine minutes West eight chains and twenty one links to a stake and charred stake Station on the West shore of the Inlet.

Thence North, twenty five degrees, thirty minutes West forty three chains to a stake at high water mark on shore-water Bay of the Pacific Ocean Station.

Thence North, twenty nine degrees forty five minutes West sixty five chains to a stake at high water mark Station.

Thence North, thirty five degrees thirty minutes West one hundred and sixty chains to a stake at high water mark Station.

Thence North, thirty nine degrees thirty minutes West thirty chains to a stake Station.

Thence North forty one degrees thirty minutes West thirty chains to a stake at high water mark Station.

Thence North, thirty seven degrees fifteen minutes West six chains to a stake at high water mark Station.

Thence North, sixty two degrees West one chain & fifty six links to a post opposite the mouth of the first barranca or gully being the North West corner of this Rancho and Station.

Thence North, forty nine degrees East two chains of a base of Southerly side of the barranca within an average of one chain wide and the banks about thirty feet high coming from the North thirty eight chains to a stake in 'a pile' of rocks, on the high rolling table land extending South East for the distance of about one mile and terminating in low table land bordering on the Ballona Bay which Bay has its terminus at a distance of about one hundred chains South East from this point. Station.

Thence North fifty seven degrees, one minute East one hundred and forty two chains and ninety one links to four large rocks Station.

Thence North fifty nine degrees East eighty chains and twenty four links to a point at intersection with the South boundary of Section thirty four in Township One South of Range Fifteen West nineteen chains and ninety three links West of the quarter Section corner eighty two chains and fifty links to a road course West one hundred and twenty six chains and sixty four links to three large rocks each fifteen inches in diameter Station.

Thence North fifty nine degrees and thirty minutes East fifty two chains to three rocks each eighteen inches in diameter Station.

Thence North sixty three degrees East two chains and forty one links to a stake being the most Northerly corner of this Rancho and Station from which a willow tree twenty four inches in diameter bears South eighty degrees East distant three hundred and thirty two links, (being a point agreed upon as the point where the Alamo or cottonwood tree formerly stood).

Thence South fifty seven degrees thirty minutes East thirty nine chains opposite to and two chains East of a

dry bed of a Lake ten chains from East to West and three chains from North to South Forty four chains and fifty links to a point cutting the South East corner of the lake. At sixty two chains and fifty links crosses a road course East ninety chains to the center of a ravine, thirty feet deep, ninety six chains to a stake and charred stake at intersection with the South boundary of Section thirty six in Township one South of Range Fifteen West twelve chains and fifty eight links West of quarter Section corner one hundred and thirteen chains and fifty six links to a stake and charred stake one hundred and fifty links North of a bunch of Turas Station.

Thence South fifty four degrees forty five minutes East forty five chains and seventy nine links to a stake and charred stake at intersection with the West boundary of Township Two South of Range Fourteen West thirty six chains and seventy five links South of the North West corner of said Township Eighty six chains and fifty nine links to a rock two and one half feet long eighteen inches wide, and twelve inches thick imbedded in the earth being an original corner Station and

Thence South, fifty nine degrees thirty minutes East, nine chains and fifty links to timber: At eleven chains and fifty links crosses a stream of water eighteen links wide, skirted with sycamore trees, course South West. At eighteen chains and fifty links crosses a road course South West to base of hills some three hundred feet high and leaves timber Thirty eight chains and eighty one links to the place of beginning containing Thirteen thousand nine hundred and nineteen acres and ninety hundredths of an acre, and being designated upon the Plats of the Public Surveys as lot numbered Thirty seven in Township One South of Range Fifteen West: Lot numbered Thirty seven in Township Two South of Range Fourteen West: and Lot numbered Thirty seven in Township Two South of Range Fifteen West of the San Bernardino Meridian.

Letter from Joseph S. Wilson

J. W. Mandeville, Esq.
U.S. Surveyor General
San Francisco, Cala.

General Land Office
March 17, 1860

Sir:

The survey of the "Ballona" Rancho finally confirmed to Augustin Machado, et al is not approved.

Our objections to the survey are fully set forth in the following:

The confirmation is by boundaries. Beginning at a Cottonwood tree, running East 7835 varas, to a pole bridge, thence South 9800 varas to mouth of a creek (Estero) thence West along the Sea Coast 7300 varas to the deep gullies (Barrancas) thence Northerly 7800 varas to the place of beginning.

The survey returned is for 13,919 $^{99}/_{100}$ acres. A survey according to the courses and distances mentioned would not enclose that quantity by perhaps 2,000 acres. The plat shows however a large body of water called "Inner Bay" some three miles long by one wide, which is included in this area. There is no mention made of quantity in the grant or decree. When the Claimant comes to petition the Board, he describes the grant by its boundaries as above, and adds "containing one league of grazing land more or less." This is understood however to refer to the quantity of land of a particular character, that is "grazing" land within the Rancho. And this view is sustained by the Map (Diseño) on which about one third of the tract is shaded green and marked "Tierras de Siembra" (cultivated lands) the residue being marked "Lomas Muertas" (barren hills). The grant and juridical possession referred to throw no further light upon the matter; the courses and distances being those of the decree. The Diseño bears a strong resemblance in form to the Survey, but that remarkable feature in the latter, the Inner Bay, is not shown on the former. A prominent natural object on the Diseño is a creek, name illegible, running Southerly through the Eastern part of the Rancho, and emptying

into a body of Water, designated "Playa" (coast or shore) which makes a boundary on one side of the Rancho.

The only creek found on the survey is one called "Ballona Creek" — doubtless the same above referred to. It empties into the "Inner Bay" not far from the South East corner of the Claim and from the Diseño it is plain that the body of water, into which this creek falls, is the boundary of the Rancho on that side. It is the only "Playa" found on the map and there is but one stream laid down. There would then appear to be no authority for embracing this Bay in the survey.

Had such an object existed within the grant, it could not have been overlooked or neglected in sketching the Diseño, nor have escaped notice and mention in the juridical possession. Again — the Diseño is drawn with some care, and the points of the Compass are designated thereon in the usual manner, and with tolerable accuracy, allowing for the variation of the Compass which is 13° 30′ East. It shows the North boundary a due East line. From the survey it appears that the place where the "Cottonwood" (place of beginning, see decree & c) formerly stood, was ascertained and agreed upon. That found, the survey should have run East therefrom (or at least the variation from that course should not have been greater than the ascertained variation of the Compass) 7835 varas — thence Southerly 9800 varas to a point on the shore (see diseño) a little East, of the mouth of the creek (Ballona). Thence along the coast (Playa) of the Inner Bay 7300 varas to the gullies (Barrancas) which will probably be found at the North end of this Bay — thence to the place of beginning.

How runs the Survey?

In the North East boundary, (which answers to the North of the decree) from the "Cottonwood" to the "Sand Stone Rock No. 2" there is an average departure of about 40° from an East course, treble the variation. Hence when the next line comes to be run, the South course for 9800 varas cannot be had without running to the Pacific coast, South of Inner Bay. But let the first line be run

from the "Cottonwood" (and this it is presumed should have been the point of beginning) East, or at least not more than 13° 30′ South of East, the distance called for of 7835 varas or about 326 chains, and we can then run from the point thus reached, 9800 varas before the Shore (Playa) of the Inner Bay is reached. Thence following that shore North West (West by the decree) to its Northern extremity and thence Northerly to the Cottonwood, and it is believed that the tract granted would be embraced within the lines, and a survey presented in accordance with the grant and decree.

The case is remanded for re-examination and unless good cause be shown to the contrary after notice to all concerned, for amendment of the survey, in conformity to the views of this Office as set forth in the foregoing.

Very respectfully

Your Obt. Servt.

Jos. S. Wilson
Commissioner

Letter from Henry Beard

Henry Beard,
Attorney-at-Law and Solicitor of Claims
and Land Patents,

(Gives special attention to procuring patents for mining claims, and upon all kinds of land entries and locations, and argues contested cases.)
Office, No. Street. P. O. Box 745.

Washington, D.C. Oct. 14th 1868

Hon O. H. Browning,
Secretary of the Interior,

Sir;

The question of a readvertisement in the matter of the survey of the Ballona Rancho, has been submitted to you in such a manner by the Comr. of the Genl. Land Office, that I deem it necessary, to prevent any misapprehension, to say, that I understand that the original grantees are now upon the tract, and have lived there for twenty eight years: — That they are, and have been able and willing to furnish all explanations called for by the Genl. Land Office in 1860: — That they made known that fact verbally or in writing to Surveyor General Mandeville, but about that time the Act of Congress of 14th June 1860 was passed, & it was regarded, at that time by Judge Hoffman, & by the Surveyor General, as requiring this survey to be advertised — It was accordingly advertised the length of time mentioned in that law, and return of that advertisement made, but no action was taken while that law was in force, by the Dist. Court or the Comr. of the Genl. Land Office.

No objection was ever made to this survey by any one except the Commissioner. We propose to reply to his objections, which will be fairly '*in limine*,' when the Survey is advertised under the act of 1864.

Should you direct the case to proceed under the act of 3rd March 1851, without any reference to subsequent laws, or be of the opinion that the advertisement made prior to the act of July 4th 1864, may be treated as a compliance with that law, my clients are ready to tender

proof by affidavits or otherwise, to meet the objections mentioned in the Land Office letter of March 1860, and would, I believe, be able to show that some of them are now met and satisfied, by evidence already in the case, identifying the surveyed boundaries as those fixed by the Mexican Government, & by the Juridical possession, and by continuous possession since that time.

I have the honor to be

Very Respectfully,

Your Obt. Srvt.

Henry Beard
Atty.

Letter from O. H. Browning

Department of the Interior

Washington, D.C. 19th Nov. 1868

Sir,

I have received your letter of the 9th ultimo, submitting the question whether the Surveyor-General of California shall be instructed to publish the Survey of the rancho "Ballona", Agustin Machado et al. confirmees, in accordance with Sections 1 and 2 of the act of 1 July 1864 (13 Stat 332).

Said survey was approved by the Surveyor General of California on the 18th September 1858, and two days afterwards was forwarded to your office as the basis for patent. Inasmuch as the Survey has not been approved either by the proper district court of the United States for California or by your office, I am of opinion that it comes within the act of 1864, and that instructions should be issued accordingly.

The papers are herewith returned.

I am, Sir,

Very respectfully,

Your ob't servant

O. H. Browning
Secretary

Hon. Joseph S. Wilson,
Comm'r of the Gen. Land Office.

Letter from Joseph S. Wilson

Department of the Interior
General Land Office
November 30, 1868

Sherman Day, Esq.
U.S. Surveyor General
San Francisco, Cal.

Sir:

For your information and guidance I enclose herewith a copy of the ruling of the Department dated 19th inst. in the case of the rancho "Ballona" Agustin Machado et al. confirmees — to the effect that the survey of said rancho, approved by the Sur. Genl. *18th September 1858* requires to be published in accordance with the 1st & 2nd Sections of the Act of 1st July, 1864, if said survey has not been acted upon judicially the fact in regard to which you will certify to this office — and if it has not been so acted upon, you will proceed to carry out the requirements of the law in respect to publication and after the statutory period for objections has expired you will make the usual return with your opinion, having special reference to the points of objection presented in the communication from this office dated — 17th March, 1860. — a copy of which is herewith enclosed.

Please acknowledge the receipt of this.

Very respectfully

Your ob't. servt.

Jos. S. Wilson
Commissioner

The plat, certificate, & field notes are returned to be again forwarded with your report.

J.S.W.

Protest Against Survey of Rancho La Ballona and Exhibits

Protest against the published Survey of the Rancho "Ballona" confirmed to Augustin Machardo et al in land case no. 369. Land Comn.

Salisbury Haley and Jose Delores Sepulveda owners of the lands in the Rancho "San Vicente y Santa Monica" finally confirmed to Ramona Serrano Sepulveda in land Case No. 457. Land Commission, present and file the following Bill of Exceptions against the published Survey of "Ballona" Rancho in this County, for the following reasons, to wit—

Exceptions First

The Survey is Erroneous. Because it embraces a large portion or tract of land in the adjoining Rancho of "San Vicente y Santa Monica" the property of claimants under this Protest.

Exception Second

The Survey is Erroneous. Because it is not made in accordance with the Decree of Confirmation — in this — That the Decree of Confirmation refers to the Evidence in the Case — to wit — The petition for the land describing it; the Deseno deliniating the land; the grant with the description of the land; and the Judicial possession, containing the measurement of the boundary lines, or by metes and bounds, to wit — Beginning at the Alamo Tree or Laguno de Alamo and running East 7835 varas; thence South 9800 varas to mouth of a Creek (now in the Sausal Redondo); Thence West along the Sea Beach 7300 varas to the *Deep Gullies;* Thence North 7800 varas so as to strike the point of beginning

Exception Third

The Survey is Erroneous. Because its West line is made to run South West to the Ocean, a long distance West of the Deep Gullies, the defined land mark, making an Angle which embraces a large tract of the land of the Rancho "San Vicente y Santa Monica" as will appear by the Sketch Map of San Vicente y Santa Monica hereto

annexed, describing Deep Gullies, as, Mojonera I°; and Loma Colorado, as, Mojonera 2ª; and Laguna del Alamo or Cotton Wood Tree, the initial point of the Survey in the Judicial possession of said "Ballona" in the year 1839.

All of said Exceptions are respectfully submitted to the Consideration of the Hon. U.States Surveyor General for California, to enable him to correct the Errors existing in said Survey.

Salisbury Haley for himself and
Atty for J. D. Sepulveda

List of Exhibits Annexed

Exhibit (A.) Sketch of San Vicente y Sta Mn —
" (B.) Deposition of S. A. Carrillo in Land Comm.
" (C.) Affidavit of S. Haley & J. D. Sepulveda
" (D.) Decree of Govn. Pio Pico in 1846.
" (E.) Testimony of S. A. Carrillo in 1839 —
" (F.) Deed from Conference to Haley et al

Argument

These Exceptions are presented and filed by the owners of the adjoining Rancho of "San Vicente y Santa Monica" complaining of the Survey of "Ballona" on the grounds that it laps over upon this Rancho and Embraces a large tract of their land

First. The Grant for "Ballona" was made in 1839, and to bound, on the West side, by the Rancho "San Vicente y Santa Monica", which was, a long time anterior to the former, in the legal possession of Fran.co Sepulveda, with defined boundaries, and on the East side, they are marked with a series of natural objects that cannot be mistaken by a Surveyor. These natural objects, along the Ballona line, are delineated on the Sketch Map annexed as — "Deep Gullies" — Mojonera I° — Loma Colorado — Mojonera 2ª — Laguna de Alamo, as the Cotton Wood tree — This Cotton Wood tree is the initial point in the measurement of the Judicial possession of Ballona in 1839 — running East from this point 7835

varas; thence South 9800; thence 7300 varas West to Deep Gullies, Mojonera I°. As the South line of this measurement is shorter than the North line. The "San Vicente y Santa Monica" consistently ought not to be encroached upon, therefore a Correction of said Survey is sought, in that the Ballona will receive its proper lands and no more.

Brief

First. A Judicial Survey is a legal determination as to boundaries it bound the former Government and becomes Equally binding upon the officers of our Govt.

U.S. v. Pico 5. Wallace

Second

A Confirmation may be void in part or whole, and when void in either, a legal survey cannot be made under it

Higuera v United States
5 Wallace. 833

Third

Confirmation in this case was made by the Warner, and afterwards by the Pio Pico. Maps hereto annexed, which became the descriptive part of the Confirmation.

Higuera v U.S. 5 Wallace
Cal Rep. 24th, 444.

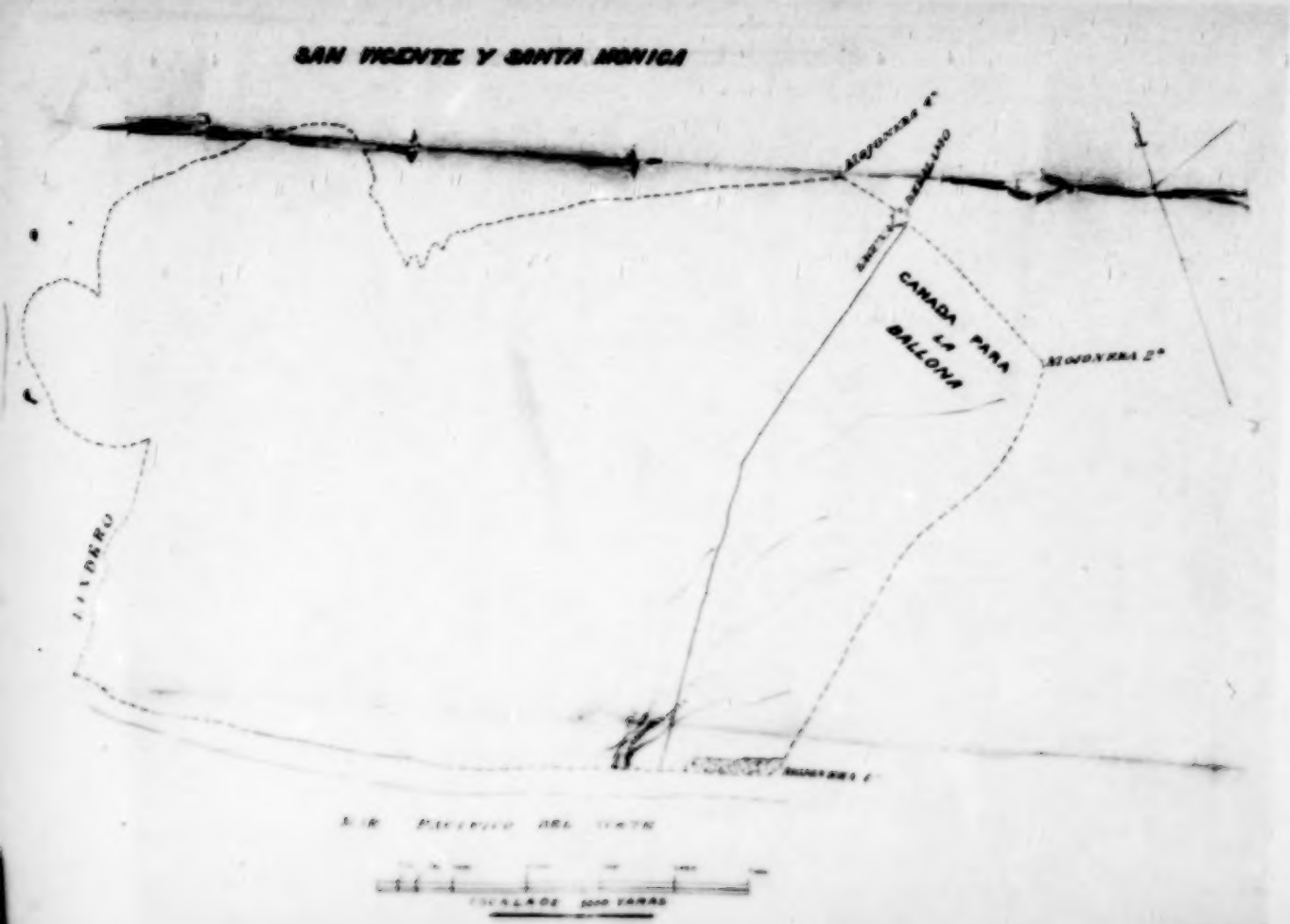

SAN VICENTE Y SANTA MONICA
Mojonera 4°
Mojonera 3°
CAÑADA PARA LA BALLONA
Mojonera 2°
LADERO

Exhibit B.

Copy of the deposition of Jose Antonio Carrillo before Hiland Hall — Court —

Los Angeles November 11th 1852

On this day, before me Hiland Hall, came Jose Antonio Carrillo, a witness in behalf of the claimant, Francisco Sepulveda, petition No. 457, and was duly sworn, his evidence being interpreted by the Secretary.

The United States Law Agent was present

In answer to these questions by counsel for the claimant, witness testified as follows:

My name is Jose Antonio Carrillo, my age is fifty seven years. I reside in Los Angeles;

I am acquainted with the Rancho called San Vicente; I have known it ever since the year 1828. It was then in the possession of Francisco Sepulveda, and he has continued in the possession of it to the present time The boundary lines were marked to him by myself in 1828. I was then Alcalde, and in consequence of some disputes between persons occupying land within the Ejidas I received an order from the Political Chief to go and settle the disputes. I did so, and at that time marked out the boundaries of this land.

They were occupying the lands provisionally. The boundaries were as follows: Beginning at the house of the Rancho San Vicente and going East to a Canada of woods called "Canada de las Alanis, near in the house or Rancho Alanis; thence Southerly passing over some table lands, and a dry laguna called de las Alamas in the lands of the Rancho "Ballona"; thence in a direct line to the Sea Coast, thence to the Potrero de Santa Monica or Topango; thence to the highest point on the Sierra; thence along the summit of the Sierra to its termination in the Canada at the place of beginning including the whole of the Potrero de Santa Monica within these boundaries; There is a Creek called Santa Monica, and the Canada is on each side of it and terminates near the

mouth of the Creek, and near the Coast; The line along the Coast passes beyond the mouth of the Creek, the tract includes the whole of the Canada; Since the boundaries were marked as before stated the said Sepulveda has occupied the whole of the land, having houses a vinyard, and cultivating the land extensively, and by keeping stock on it; The Potrero de Santa Monica has always been reputed to be a part of the Rancho San Vicente.

Jose Antonio Carillo

Sworn to & Subscribed
before me Hiland Hall
Comr.

U.S. Surveyor Genl. certifies this testimony taken before the Land Commission in the claim of Franco Sepulveda for Rancho San Vicente y Santa Monica, filed Nov 11, 1852

Signed by S. Upson

State of California }
County of Los Angeles }

Salisbury Haley and Jose Dolores Sepulveda being duly sworn on their each depose and say that they are the owners of that tract of land of the Rancho "San Vicente y Santa Monica" confirmed to Ramona Serrano Sepulveda in said Case No. 457. Land Comn. that said Rancho adjoins the Ballona on the west side; that affiants are well acquainted with all the boundary lines of said Rancho as surveyed and marked out by Alcalde Jose S. Carrillo in the year 1828, and as is contained in the delineations upon the map, hereto annexed, by which final Confirmation was made by the United States Dist. Court; that the East-boundary line of such Rancho embraced the following known objects to wit the Canada de Mangles, the Arroyo Alanis-seca, the Leguna de Alamo, the table land to the Loma Colorado, thence in a direct line in the Deep Gullies at the sea beach near the Estuary of the Ballona, and that the present published Survey of Ballona em-

braced a large tract of Affiants land, a part of the Rancho "San Vicente y Santa Monica".

Said affiants complaining of the Survey of the said Ballona-say that the same is erroneous, because it does not respect the affiants rights of property in the adjoining Rancho, and includes therein a large tract of their land of San Vicente y Santa Monica

Salisbury Haley
Jose Dolores Sepulveda

Subscribed and sworn to before me
this 3rd day of May 1869
Thomas D. Mott
County Clerk
By F. N. Gillette Deputy

Exhibit D

Copy of Decree by Pio Pico
for Sobrante Grant 1846,

Los Angeles June 8th 1846

There remains a piece of vacant land in the place where the citizens Francisco Sepulveda, Augustin Machardo, Isidro Reyes, Francisco Marques and Maximo Alanis have in dispute the revalidating his Concession is not made to prejudice third parties, as appears by the testimony already taken, in Conformity with the law of the 18th August 1824, and the regulations of the 21st November 1828, in the use of the faculties with which I find myself authorised in the name of the Mexican Nation, I have determined by these present documents in conceding to Don Francisco Sepulveda the said piece of Sobrante Land in the Ranch in question with the above named persons, exactly as is described in the "Map"— contained in the Expediente prepared to explain this question, leaving him with his legal rights herein determined so that he will have his remedy at the installation of the Superior tribunal of justice. Consequently let the respective title issue to him, and reserve the Expediente to be submitted for the approval of the Excellent Departmental Assembly.

Pio Pico Constitutional Governor of the Department of the Californias Order decree and sign, I certify it.

Jose Matias Moreno
Secy. int.

Exhibit E

Copy of the testimony of Jose A. Carrillo, taken before the 1st Alcalde in Los Angeles in the Year 1839, touching the grant made to F. Sepulveda for "San Vicente y Santa Monica" by Gov. J. M. Echeandia and the judicial survey made by said Carrillo in presence of Machardo, Talamantes, Ruis and others in the year 1828.

Jose Anto. Carrillo, personally known to me, doth solemnly swear upon his oath and — says — that he will truly answer all the questions put to him touching the following interrogatories.

Question? What is your name, Age, State, religion and nativity?

Answear: I am 43 years old, a widower, a Roman Catholic, born at the Port of San Francisco and live in this City.

1st Respecting the First question in the interrogatories, this Deponent says — That in the Year 1828, he was Alcalde, and received an Order from Don Jose Maria Echeandia "Political Chief" at that time, in consequence of a reclamation from various neighbors upon the outside lands of this City to be given possession provisionally of the lands they occupy, accordingly. I gave Don Fran.co Sepulveda possession of the place called San Vicente with a piece of protrero called Santa Monica; this Order was confined to those who had 150 head of horned cattle. Mr. Sepulveda knowing this condition, procured An Order to have granted to him the said place with the addition of the Potrero de Santa Monica by virtue of said Order this deponent gave him the Possession thereof in the presence of Felipe Talamantes, Augustin Machardo, Anastasia Abila, Joaquin Ruis and

others whose names he doesn't recollect. By this Act of possession and the above mentioned order he has been considered the owner of said land ever since.

2d He says — having said enough in the first instance respecting the possession, that he does well remember the boundary lines as marked out at that time, but remembers that on the West side the land was marked out as far as the Conclusion of the Potrero of Santa Monica: And On the East side as far as the Canada of Mangles; Also he knows from that time Sepulveda occupied the place with all classes of cattle, he knows the facts at that as Alcalde.

And the whole Ranch has been in his possession as he has had houses and farms thereon; that what is here said he affirms and ratifies as true without adding or retracting anything therefrom after the reading the affidavit to him; not being precluded by law this is signed in my presence with those of my assisting witnesses interlined horned cattle.

Man. Domingues
Ig. Coronel

Jose Antonio Carrillo
Fran.co Ma. Alvarado

F

This Indenture made the 7th day of September in the year of the Lord One Thousand Eight hundred and Sixty Eight

Between Ramona Serrano Sepulveda in the County of Los Angeles State of California party of the First part and Jose Dolores Sepulveda and Salisbury Haley both of the same place parties of the second part. Witnesseth that the said party of the first part, for and in consideration of the sum of three hundred dollars lawful money of the United States of America to her in hand paid by the said party of the second part, at or before the unsealing and delivery of these presents, the receipt whereof is hereby acknowledged, has remised released and quit-claimed, and by these presents, does remise release and quit-claim unto the said parties of the second part all that tract of land or Rancho known by the name of

San Vicente and Santa Monica granted to Francisco Sepulveda in the year 1828 by Mr. Echeandia, and re-granted the 20th day of December 1839 by Governor Alvarado and affirmed on the 8th day of June 1846 by Governor Pio Pico and Confirmed by the United States Authorities in said Sepulveda and his heirs; said Rancho is situated in the County and State aforesaid and bounded on the West and North by Malagar and the Sierra; on the West and South by the Pacific Ocean; and on the East by the Fire hill, the Laguna de Alamos and the Arroyo Seca; Excepting and reserving from the operation of this Conveyance the land conveyed by metes and bounds to Carmen Sepulveda by Deed dated July 1st 1863. & Recorded in Book No. 6, page 293, of the Los Angeles County Records, and Conveyed to Jose Dolores Sepulveda by Deed dated August 1st by metes & bounds, 1863, and recorded in Book No. 8 page 353, in said County Records office, and Conveyed to Joaquin Sepulveda & others by Deed dated January 29th 1868 for the Potrero of Santa Monica lying West of Arroyo Santa Monica and recorded in said County Recorders office in Book 9, page 245. Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging it in any wise appurtaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. And also all the Estate right, title interest, property possession, claim and demand whatsoever as well in law as in equity of the said party of the first part, of, in and to the above described premises and every part and parcel thereof, with the appurtenances. To have and to hold all and singular the above mentioned and described premises together with the appurtenances unto the said parties of the second part, their heirs and assigns forever. And on the ninth line the word trust and interlined before signing.

In Witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

her
Ramona Serrano X Sepulveda
mark

Signed sealed and delivered in presence of George D. Fisher

the termination — ed — and the word August erased before signing

Contestants' Brief on Exceptions to Survey of Rancho La Ballona, January 4, 1870

Brief

In the matter of Exceptions by S. Haley & others, to the Survey by the United States Surveyor general for California of the "Ballona" Rancho S. Haley & J. D. Sepulveda excepts to said Survey of Ballona, and ask that the same may be corrected on the following grounds.

1st The Survey violates the grant of cession to Machardo & Talamantes of Ballona, and the segregation made by the petition, Deseno, grant & judicial possession of said Ballona

2nd The Survey violates the Decree of final confirmation

3rd The Survey violates the rights of property in the adjoining Ranch of San Vicente y Santa Monica, the property of Contestants and embraces a large tract of their land outside of the limits of the grant to Ballona as is described by the petition, the Deseno, the Grant, the Evidence in the Case No. 369, and the measurement by varas at the time of giving judicial possession, and in open violation of the laws governing surveys of private land claims. approved March 3, 1851 and July 1st, 1864

I

The Decree in this case refers to the Grant, Map, judicial possession and evidence on file, which are made a part of the Decree of Confirmation for the purpose of description, and are as much a part of it, as though mentioned specifically in the Decree itself, in which the validity of the grant is recognised and the mention of the specific land granted according to the description in the documents referred to in said Decree; neither the government nor grantees could ever assert any rights against such segregated boundaries as are described by the Decree of Confirmation herein; 14 Cal 550; 1 Wallace 439 —

Judicial possession in this case accurately described the boundaries and extent of the lands granted, and was conclusive on both parties; The Survey must follow said judicial possession 1st Wallace 439 — 5 Wallace p 540, 4 Wallace 259 —

This grant was made by Metes & bounds, or by the lines of the other ranches encircling it, and in order to determine the boundaries and segregate the lands granted to "Ballona" measurement was made at the time of delivery of judicial possession, that proceeding removed all doubt of the locality of the land granted, it became a judicial determination, and binding on the government in making the survey by virtue of confirmation, though in law, it is only a resurvey under our system 5 Wallace 539, 24 Cal 644, 33 Cal 448, 4 Wallace 260 1 Wallace 107, 5 Wallace 540, 4 Wallace 259 —

The Decree of Confirmation in giving boundaries must prevail as the law of the case, 5 Wallace 834

The Decree of Confirmation is a finality, both as to title and as to boundaries which it specifies, if erroneous, in either particular, the remedy was by appeal, the appeal having been withdrawn, it is closed forever, 2 Wallace 448.

The United States Surveyor-general must follow the boundaries designated in the Decree of Confirmation in making the survey, either according to the expressions in the Decree, or according to the designations in the documents referred to for description, as in this case, where the Deseno and judicial possession must control the survey, and they agreeing there is no conflict of description by which a wrong determination might be made 1 Wallace 439 —

The Decree of final confirmation adopting the map as descriptive of the boundary is conclusive of the question, especially when the judicial possession exactly corresponds with the designations of the Map, showing without conflict the boundaries of the land granted to "Ballona" which the Surveyor general must resurvey in Exact Conformity to the Survey made by the former

Government — to wit — Beginning on the margin of Laguna del Alamo, running East 7835 varas to pole bridge; thence South 9.800 varas to the mouth of a Creek; thence along the sea beach 7300 varas in the Deep Gullies (Barrancas); thence North 7800 varas so as to reach the point of beginning —

The Deseno shows the point of beginning to be on the margin of Laguna del Alamo, and that the Deep Gullies are at the Sea beach near the border of an (Estero) of the sea formed in the "Ballona," this West line of "Ballona" being the only one excepted to, and there being a natural object well defined & unmistakable at each end of said line, must control the establishing of said line in this survey, as natural objects in boundary lines, being less liable to mistake than other inferior means in determining a line, must control in establishing this West line in said survey.

The grant of "Ballona" describes the South line of the land so granted to be the boundary of Sepulveda's land. This would place the (barrancas) on the border of the Estero some distance from the Sea beach, instead of, at the Sea beach, but as the judicial possession placed it at the Sea beach that becomes the law of the case.

II

The final Decree of Confirmation is the rule governing the United States Surveyor general in making a survey of a private land claim

Sec 13th of Act of Congress of 3rd March of 1851 provides that "It shall be the duty of the Surveyor general of California to cause all private claims which shall be finally confirmed to be accurately surveyed, and to furnish plats of the same

Sec 7th of Act of Congress approved July 1st 1864 provides "It shall be the duty of the Surveyor-general of California in making Surveys of the private land claims finally confirmed, to follow the Decree of Confirmation, as closely as practicable whenever such Decree designates the specific boundaries of the claim" In this

case, the specific boundaries are designated in the grant Deseno & judicial possession referred to for description in the Decree of Confirmation — This survey was made probably under the first named law, though not less excusable thereby, but the adjudications of these Exceptions by the U.S. Surveyor general must be made under the law of 1864 and the determination must be governed thereby; said Survey must be corrected so as to conform to the Confirmation which refers to the documents on file in case no. 369 — for discription

III

We now pass to the East boundary line of the rancho "San Vicente y Santa Monica" which is an older grant with a prior judicial possession (as evidence by the Ballona grant) The United States District Court in its Decree of confirmation confirms, first, "the grant of J. B. Alvarado of Dec. 20, 1839, to F. Sepulveda according to the Map of J. J. Warner; And in the other part," the additional lands granted by Pio Pico governor of the Californias to said Sepulveda by deed of grant dated June 8, 1846, and being the surplus lands not heretofore granted to Sepulveda, Machardo, Talamantes, Reyes, Marques & Alanis reference being made to said Grants Maps, judicial possession and depositions on file (No. 457) the Grant of Pio Pico is a Sobrante title for all the land adjoining Sepulveda not before granted to said persons, and as the concession to Marques & Reyes had already been adjudicated by the Mexican Government to belong to Sepulveda (vide sic on file — No 457) it only remained to define the West boundary lines of the ranches "Ballona" & "San Jose de Buenos Ayres" in order to determine the extent of this Sobrante grant, while the grants of the last named ranches recognise the superior title of Sepulveda to defined limits, these limits are well explained by the papers in the cases (especially in Nos. 369 & 457 & 368.)

The papers, maps, and depositions of Carillo & others in Case No. 457, show that Sepulveda's land was segregated by Judicial possession and measurement in 1828,

confirmed by a new grant in 1839 which was approved by Departmental Assembly April 3, 1840 — resurveyed in 1843 & the making of the Warner Map, and also confirmed in 1846, in the Sobrante grant.

We submit that the confirmation referring to the papers on file in case no. 369 establish the west line of "Ballona" beyond the possibility of cavil to extend from Laguna del Alamo to the Deep Gullies (Barrancas) near the border of the (Estero) at the sea beach.

If we were ignorant of the fact that Henry Hancock as U.S. deputy surveyor (now of the law firm of Larrabee & Hancock) made the survey of said "Ballona" claim, we might marvel at the strange revolution that brings this Mexican Record back from the Land Office at Washington for construction and for a determination of the rights of parties under it within the jurisdiction of the Honorable United States Surveyor-general for California in the present year of 1869 —

The Record of Ballona impresses upon us the conviction, that said survey was made in palpable violation of law and the facts, if not in fraud:

That a correction is inevitable so as to conform to the Confirmation, the grant, the Deseno and judicial possession with measurement all corresponding in discription against said survey —

Kewen & Howard
Attys of Contestants

We append the Deseno

Affidavit of Jose del Carmen Sepulveda

In the matter of the survey of the Rancho
Ballona, in Los Angeles County, State of
California, made by Henry Hancock,
U.S. Depty Suvr in July 1858.

Jose del Carmen Sepulveda being duly sworn says, he is 47 years of age, a Citizen of the United States, and a resident of Los Angeles County, State of California.

That he is a son of Francisco Sepulveda, the owner and claimant of the Rancho San Vicente, which adjoins the Rancho Ballona on the North West. That he is well acquainted with the said ranchos, and was present when the juridical measurement was made by the Mexican authorities of the line between the said Ranchos. That he knows well the positions of the Cotton wood (Alamos) tree and the deep gullies (barrancas). That the tree decayed, and fell to the ground, and that thereafter the place where it stood was marked by a pile of stones. That the deep gullies are a prominent and easily known point. That the corners fixed by the U.S. Surveyor Hancock are at the identical places where the Alamos stood, and where the barrancas now are, and were at the time of the juridical measurement.

That the line between the Alamos and the barrancas passes over a high plain, and the line of the Hancock survey is substantially that of the Juridical measurement.

This line has been recognized and adhered to as the dividing line between the Ranchos San Vicente and Ballona for many years, before the time of the Hancock survey.

That he is well acquainted with the natural features of the land of Ballona. That the object marked on the Map of the Hancock survey as "inner bay" is in fact not an arm of the sea, but is only land overflowed at times when storms close by sand the mouth of the creek which runs through the rancho, and which is delineated upon the diseño.

That the stones were placed at the foot of the Alamos at the time of the Juridical measurement, but that the tree has decayed and the stones remain.

his
Jose del Carmen X Sepulveda
mark

Subscribed and sworn to before me
this 29 day of Jan. 1870

Henry M Smith
Notary Public

[Seal]

Affidavit of Tomas Talamantes

In the matter of the survey of the Rancho Ballona, in Los Angeles County, State of California, made by Henry Hancock, U.S. Deputy Surveyor, in July 1858.

Tomas Talamantes being duly sworn says he is 78 years of age, a citizen of the United States, and a resident and citizen of Los Angeles County, State of California.

That he is one of the grantees of the Rancho Ballona, granted by Governor Alvarado in 1839.

That affiant was present when the Alcalde Manuel Domingues gave the possession of said Rancho. That the line between the Ranchos San Vicente and Ballona, ran from the deep gullies in a direct line to the Cotton-wood tree.

That stones were placed at the base of this Cotton-wood tree, because the tree was already decayed and likely to fall. That affiant knows well these two points and has seen them many times each year since and before the possession.

That he went to see them and did see and recognize them within a few days past, to-wit on the 26th of this month. That the survey of Hancock ran the line between the deep gullies & the Cotton-wood tree, or the spot where the Cotton-wood once stood substantially as it was measured at the Juridical possession. That the deep-gullies are objects not easily mistaken, and not to be confounded with other objects.

That Francisco Sepulveda was present at the time the possession was given, and said he wanted a piece of the land, but had no grant or any paper showing his title. That thereupon the Alcalde ran the line straight between the barrancas & the Cotton-wood, and Sepulveda did not further object —

That affiant was present when Leonardo Cota gave the possession of the rancho San Vicente to Francisco

Sepulveda in the year 1846. That affiant was called as one of the Colindantes, and as such appeared on the line with Augustin Machado, and that then the said Cota measured the line from the barrancas to the place of the Cottonwood, and Francisco Sepulveda as well as affiant and Augustin Machado agreed to the Same. That this was the same line as that measured and established in 1839 by Manuel Domingues as the line of the rancho Ballona.

That the feature on the map of the Hancock survey called the "inner bay" is not a bay or arm of the sea, but only land overflowed in times of high water and storms, when the sand blocks up the mouth of the creek. That it is now dry land, and is pastured by cattle sheep and horses.

That affiant has no longer any interest or title to said Rancho or any part thereof.

his
Tomas X Talamantes
mark

Subscribed & sworn to before me
this 29 day of Jan. 1870

Henry M Smith
Notary Public

[Seal]

Affidavit of Ignacio Machado

In the matter of the survey of the Rancho Ballona, in Los Angeles County, State of California, made by Henry Hancock, U.S. Deputy Surveyor, in July 1858.

Ignacio Machado being duly sworn, says, that he is eighty years of age, a Citizen of the United States, and a resident and Citizen of Los Angeles County in the State of California. That he is one of the grantees of the Rancho Ballona, granted Nov 27th 1839 by Juan B. Alvarado, Governor of the Californias. That he was present when the Juridical possession of said Rancho was given. That he knows well the deep gullies (Barrancas) and the Cotton-wood tree (Alamos)

That at the time the possession was given the Cotton-wood tree was about three feet in diameter, but was hollow and decayed. That because of the age and decayed state of the tree, there were stones placed at its roots, better to mark the place.

That the deep-gullies are about in the same condition they were at the time of the Juridical possession, and are objects easily found, and cannot easily be mistaken.

That at the time of the Juridical possession affiant called Francisco Sepulveda to be present at the same, and he was present, as was also Maximo Alanis another adjoining proprietor.

That said Francisco Sepulveda then said he wanted a piece of the land and had asked for the same, whereupon the Judge who gave the possession asked him if he had any document or grant, and he replied that he had not. That then the judge told him he must carry out the order of the Governor and give the possession, and then proceeded to do so — drawing the Cord from the barrancas to the Cotton-wood tree. That Manuel Domingues was the Alcalde who gave the possession.

That affiant was present when the Deputy Hancock made the survey in question. That Francisco Sepulveda died in 1853. That at the time of said survey, Jose del Carmen Sepulveda and Juan Maria Sepulveda sons of Francisco were present and went with affiant and Hancock and pointed out and agreed upon the Barrancas and the Alamos as the dividing line between San Vicente and Ballona.

That the lines as run by said Hancock are substantially the same as those of the Juridical possession, the line between the barrancas & the Alamos being run nearly on a right line between those points. That affiant has within a few days past gone upon the ground, and now states that the points are well-defined and easily recognized — the line being marked with piles of stones, and the pile of stones still remaining at the place where the Alamos stood.

Affiant further says that the feature shown on the map of the Hancock survey as the "inner bay" is not a bay or arm of the sea, but that in times of storms & floods the waves of the sea close the mouth of the creek with sand, and thus cause the waters to rise and overflow the land. That the waters of said overflow are fresh and suitable and are used for watering cattle and horses. That at this time nearly all of the land represented as an "inner bay" is dry land, and is used as pasturage.

his
Ignacio X Machado
mark

Subscribed & sworn to before me
this 29 da[illegible] of January 1870

Henry Smith
Notary Public

[Seal]

Affidavit of Henry Hancock

In the matter of the Protest of S. Haley against the final survey of the Rancho La Ballona, finally confirmed to Don Augustin Machado et al.

Henry Hancock being duly sworn says, that he is the person who as, U. S. Dep Sur, in July 1858, executed the final Survey of the said Rancho La Ballona and that in the execution of the work in the field, there were present at the point marker Station 31, Barranca or Gully, Jose del Carmen Sepulveda and Juan Maria Sepulveda, two sons of the late Francisco Sepulveda, Confirmee of the Rancho San Vicente y Santa Monica, adjoining the Rancho Ballona on the North West. That they were present as the representatives of the said rancho of the Sepulvedas, and as such claimed and pointed out the said Barranca or Gully as the point where the two Ranchos La Ballona and San Vicente y Santa Monica joined each other on the sea shore; and from that point the said Jose Carmen Sepulveda, whom I then supposed to be the elder of the sons of the deceased Francisco Sepulveda, and who was then residing upon the Rancho, was efficient in riding ahead to the different stations of piles of stones along the plain, and pointing them out to me, in company with several other persons, up to what is on my map of the said survey marked Station 35. That on arriving at that point, which is near a small dry arroya, (not marked on the map) some 12 links wide, course Southwesterly, the said Sepulvedas and the owner of the Ballona agreed upon a point on the right bank of said arroya, as the point where the Alamos or Cotton-wood tree, called for in my instructions as a point in the boundary line of La Ballona, once stood, and which point is designated on the map of Ballona as Station 35. That the aforesaid stations, from 31 to 36, were points claimed by the representatives of the two adjoining ranchos, San Vicente y Santa Monica and La Ballona, as being the dividing line of the said ranchos, and that while running the said line no other points were suggested

or talked about by anyone. That at that time it was understood by the owners of both ranchos that I was executing a survey of them both, but for want of time I never completed the field work of the survey of San Vicente y Santa Monica and therefor never made return of it to the office of the U.S. Sur Genl for California.

Henry Hancock

Subscribed & sworn to
before me this 3 day of
Feb. 1870.

Henry M. Smith
Notary Public.

[Seal]

Claimants' Brief re Survey of Rancho La Ballona

BEFORE
The
U.S. SURVEYOR GENERAL
San Francisco, California.

ARGUMENT
In Favor of the Survey of the
RANCHO LA BALLONA,
As Made by
HENRY HANCOCK,
Deputy U.S. Surveyor, in 1858.

Chas. H. Larrabee,
Atty for Claimants.

SAN FRANCISCO:
PRINTED BY TURNBULL & SMITH, LAW PRINTERS,
No. 516 Sacramento Street, below Leidesdorff.
1870.

IN THE MATTER OF THE SURVEY
of the
RANCHO BALLONA,
Before
HON. SHERMAN DAY,
U.S. SURVEYOR GENERAL.

BRIEF FOR CLAIMANTS.

I.

The single question before the Surveyor is, does the survey of 1858 include a part of the Rancho San Vicente y Santa Monica.

No objection is made to any other line than the one dividing these two ranchos; a doubt was raised at some former period whether the feature represented as "inner bay" upon the map of the survey, was, or was not, an arm of the sea, or a harbor. This doubt is dissipated by the affidavits presented herewith, which show conclusively

that this land is now dry and fit for pasturage, and is only covered by the back-water of the creek in times of storms and floods, by the stoppage of the outlet with drifting sands.

This rancho was granted Nov. 27th, 1839 to Augustin Machado *et al*, by Governor Alvarado. The description in the grant is as follows:

* * * * * * * * *

"Bordering at the East with Mr. Policarfio Higuera, "at the North with Mr. Alanis, at the West with Mr. "Antonio Ignacio Avila, and at the South with Mr. "Sepulveda."

The record of juridical possession which was made Dec. 31st, 1839 describes the boundaries as follows:

"On the same day, month and year, being at the foot "of a cotton-wood tree (*alamos*) at a long distance from "the house where dwell Señores Machado and Tala- "mantes, * * * * * by my order the "cord was established from the cotton-wood tree, to "which cuts of a hatchet were given to serve for a "land-mark, a direction to the East, were measured and "counted 7,835 varas, terminating at a little pole-bridge, "which was fixed for a land-mark, at which point was "the adjoining neighbor Don Policarfio Higuera, he not "manifesting any objection, it was given for a perpetual "measurement. From thence the cord was stretched a "direction toward the South, and were measured and "counted 9,800 varas, which terminated at the mouth of "the creek (*Estero*) a place which was fixed for a land- "mark. * * * * * Passing to stretch "the cord towards the West, there were measured along "the sea coast 7,300 varas, which terminated at a point "called the deep gullies (*barrancas*) a situation which "was fixed for a land-mark. From there the rope was "stretched in a direction towards the North, taking a "course so as to strike the cotton-wood tree (*alamos*) "whence the measurement was commenced, and there

"were measured 7,800 varas, the adjoining neighbors "being Francisco Sepulveda and Maximo Alanis, the "former although he indicated that he had asked the "Government for a small piece of this land; but as he "did not present the memorial (*constancia*) nor docu- "ments, these were continued, and the measurement was "given."

The decrees of the Land Commission and of the U.S. District Court *adopt the precise boundaries of the juridical measurement.* The affidavits of Jose del Carmen Sepulveda, (who is a son of the Francisco Sepulveda mentioned in the record of possession) Tomas Talamantes and Ignacio Machado, established beyond question the position of the *Barrancas* and of the *Alamos*, and taken together with the affidavit of the Surveyor, Hancock, show the U.S. Survey is precisely upon the line and between the objects described in the juridical measurement and in the decree of the U.S. Court.

In fact, the Mexican Survey and diseño, and the American Survey and map, are practically the same. Hence I shall conclude, no question will be made before the Land Department as to this fact.

Upon further examination it will be seen that the record of the juridical possession of the Rancho San Vicente, made June 26th, 1846, adopts this precise line, running between the Barrancas and the place of the Alamos (then a stone, the tree having decayed) as the boundary of that rancho, Señores Machado and Talamantes were present and assented to the line.

"• • • • • • the cord was drawn from "the top of a hill of stones (*'Mojonera* of the Warner "Map) the boundary mark of Marquez and Isidro Reyes, "in a direction from North to East (*South to West*) "and there were counted 5,700 varas, which ended in the "first ravine, (*'Barranca'* of the Warner Map) also a "boundary of the said individuals, where appeared "Francisco Marquez, and he was satisfied."

"From this place the cord was drawn W 27¼° N "(*South* 27¼° *East*) and there were counted 2,500 varas, "which ended in the second ravine (*a point also marked "on the Warner Map*) a boundary mark of the Señores "Machado and Talamantes who were present without "manifesting any objection. From this point the cord "was drawn N. 45° E. and then were counted 7,700 varas, "which ended *at a stone*, a boundary mark of the said "Machado and Talamantes and Maximo Alanis."

See affidavits of Carmen Sepulveda, Tomas Talamantes and Ignacio Machado filed herewith, which establish the fact that stones were placed at the foot of the decaying Alamos.

That there is a confusion and misdescription of courses in this record of possession, is made certain by the Warner Map, and is easily shown on the ground where the natural objects are plainly and unmistakeably to be recognized.

See also copy of record attached to brief in the case of Mott *vs.* Reyes and filed herewith and marked exhibit A, and to the Transcript in the San Vicente case, marked Exhibit A.

II

The objections to the survey, are based upon the recitals in the decree of the U.S. Court in Case No. 143, *San Vicente y Santa Monica.*

In deciding upon the objections, in the case now in hand the officers of the Land Department will find it advisable to take up these two surveys and examine them together.

The decree in San Vicente y Santa Monica is as follows:

"The lands of which confirmation is made are the same "known by the name of San Vicente y Santa Monica, "lying in the County of Los Angeles, being in part the "same lands granted to Francisco Sepulveda by Juan B. "Alvarado, Governor of the Californias, by deed of grant

"made on the 20th of December A. D. 1839, and more "particularly described in the map marked 'No. 1, A. F.' "annexed to the deposition of J. J. Warner, taken before "Commissioner Alpheus Felch, and in the depositions on "file; and being in the other part the additional lands "granted by Pio Pico, Governor of the Californias to the "said Francisco Sepulveda, by deed of grant bearing date "June 8th, 1816, and being the surplus lands heretofore "granted to the said Francisco Sepulveda, nor to Augus- "tin Machado, Isidro Reyes, Francisco Marquez or "Maximo Alanis."

It will be seen that the claimants of Ballona have the elder grant, the elder possession, and the elder decree.

But there was no grant of December 20th 1839 to Sepulveda as recited in the decree of December 21st, 1857. None has been found or produced, nor can be. The document of December 1839, (not *December 20th*) *transcript folios* 73, 193, is at best but an "order of concession," and this was arrested and recalled by a subsequent order of the Governor. *Folio* 201. So *no title ever issued under the order,* and the recitation in the decree that a deed of grant was made December 20th 1839, is now seen to be *false in fact.* No boundaries are mentioned — no diseño referred to, none of the necessary conditions required by the Mexican law were annexed to the order. No juridical possession was ever had, until one was given under the grant of Pico in 1846, and which is quoted above.

Thus if the Surveyor looks for the "deed of grant" referred to in the decree, in order to ascertain whether the line between the *Barrancas* and the *Alamos* is or is not correct, he will find no such document. Nor will the "order of December 1839" aid him in any way.

Nor will the map marked "No. 1, A. F." annexed to the deposition of J. J. Warner, throw any more light upon the question.

That map, it will be seen, is a mere outline map of the lands *claimed* by Marquez and Reyes, Maximo, Alanis,

Señors Machado and Sepulveda. It was made in May 1843 — *five years after the grant and Juridical possession of Ballona.*

It cannot for a moment be supposed the U. S. Court intended, by referring to this map, to include the lands of either Machado, Alanis or Marquez and Reyes, as that Court had already rendered decrees in their favor for the *precise* lands shown on the map to be claimed by them respectively.

What then is the meaning of the decree? Plainly this: If there *are* lands delineated on the map over and above the lands granted by Pico, in 1846, and *not* included in the grants of Machado, Alanis, Marquez and Reyes, then *such* lands are confirmed. In other words the decree of the Court gave to Sepulveda the lands included in the juridical possession of 1846, *and as much more as is shown on the Warner map, and not theretofore granted and decreed to the other claimants.* In doing this the Court was misled, for in fact there is no grant to Sepulveda other than the *Sobrante grant* of 1846, and this alone should have been confirmed.

In brief, the claimants of Ballona ask that the survey of 1858 be approved for the following reasons:

I.

Because the survey follows the grant, the juridical possession, the diseño, and the decree of the U. S. Court.

II.

Because the grant, possession, and decree, (conceding a conflict with San Vicente, which we do not) are prior to those of San Vicente y Santa Monica.

III.

Because there is no such thing as a "deed of grant" made to Sepulveda, on Dec. 20th, 1839.

IV.

Because the confirmation according to the Warner map, is only of such land within its lines, *not represented as claimed by Machado, Alanis and Marquez and Reyes.*

V.

Because, even if the apparent force of the decree on its face, confirms portions of the lands of these persons to Sepulveda, the decree being subsequent to the others, is void to that extent.

Opinion of Attorney General. Lester's Land Laws, 643.

VI.

Because the line between the Barrancas and the Alamos, was acquiesced in by Sepulveda in Dec. 1839, (the time of the Juridical measurement of Ballona,) *and was agreed upon by both Sepulveda and the Machados, at the time of the Juridical measurement of San Vicente in June* 1846.

VII.

Because the record and act of Juridical possession of Ballona had all the force and efficacy of a Judicial determination. It bound the former Government, and is equally binding upon the officers of our Government. It is especially binding in this case, for the reason that there is a substantial conformity between the juridical lines, the decree of the U. S. Court, and the survey of the U. S. Deputy.

U.S. v. Pico 5. Wallace 539.
Graham *v.* U.S. 4 Wallace, 261.

CHAS. H. LARRABEE,
Atty for Claimants.

EXHIBITS.

Affidavit of Jose del Carmen Sepulveda.

Jose del Carmen Sepulveda, being duly sworn, says he is 47 years of age, a citizen of the United States and a resident of Los Angeles County, State of California. That he is a son of Francisco Sepulveda, the owner and claimant of the rancho San Vicente, which adjoins the rancho Ballona on the north-west.

That he is well acquainted with the said ranchos, and was present when the juridical measurement was made by the Mexican Authorities of the line between the said ranchos. That he knows well the position of the cotton-wood tree, (*alamos*) and the deep gullies, (*barrancas*). That the tree decayed and fell to the ground, and that thereafter the place where it stood was marked by a pile of stones. That the deep gullies are a prominent and easily known point. That the corners fixed by the U. S. Surveyor, Hancock, are at the identical places where the Alamos stood, and where the Barrancas now are, and were at the time of the juridical measurement.

That the line between the Alamos and the Barrancas passes over a high plain, and the line of the Hancock survey is substantially that of the juridical measurement.

This line has been recognized and adhered to as the dividing line between the ranchos San Vicente and Ballona, for many years before the time of the Hancock survey.

That he is well acquainted with the natural features of the land of Ballona. That the object marked on the map of the Hancock survey as "inner bay" is, in fact, not an arm of the sea, but is only land overflowed at times when storms close with sand the mouth of the creek which runs through the rancho, and which is delineated upon the diseño.

That the stones were placed at the foot of the Alamos at the time of the juridical measurement, but that the tree decayed and the stones remain.

Signed, JOSE DEL CARMEN SEPULVEDA.

[*Verified.*]

Affidavit of Tomas Talamantes.

Tomas Talamantes, being duly sworn, says, he is 78 years of age, a citizen of the United States, and a resident and citizen of Los Angeles County, State of California.

That he is one of the grantees of the rancho Ballona, granted by Governor Alvarado in 1839. That affiant was present when the Alcalde, Manuel Domingues, gave the juridical possession of said rancho. That the line between the ranchos San Vicente and Ballona ran from the deep gullies in a direct line to the cotton-wood tree. That stones were placed at the base of the cotton-wood tree, because the tree was already decayed and likely to fall.

That affiant knows well these two points, and has seen them many times each year, since and before the possession. That he went to see them, and did see them within a few days past, to wit: on the 26th of this month. That the survey of Hancock ran the line between the deep gullies and the Cotton-wood tree, or the spot where the Cotton-wood once stood, substantially as it was measured at the Juridical possession.

That the deep gullies are objects not easily mistaken, and not to be confounded with other objects.

That Francisco Sepulveda was present at the time the possession was given, and said he wanted a piece of the land, but had no grant or any paper showing his title. That thereupon the Alcalde ran the line straight between the Barrancas and the Cotton-wood, and Sepulveda did not further object.

That affiant was present when Leonardo Cota gave the possession of the Rancho San Vicente, to Francisco Sepulveda in the year 1846. That affiant was called as one of the Colindantes, and as such appeared on the line with Augustin Machado, and that then the said Cota measured the line from the Barrancas to the place of the Cotton-wood, and Francisco Sepulveda as well as affiant and Augustin Machado agreed to the same. That this was the same line as that measured and established in 1839, by Manuel Domingues as the lines of the Rancho Ballona.

That the feature on the map of the Hancock survey called the "inner bay" is not a bay or arm of the sea, but only land overflowed in times of high water and storms, when the sand blocks up the mouth of creek. That it is now dry land and is pastured by cattle, sheep and horses.

That affiant has no longer any interest or title to said Rancho or any part thereof.

Signed. TOMAS TALAMANTES.

[*Verified.*]

Affidavit of Ignacio Machado.

Ignacio Machado being duly sworn says, he is 80 years of age, a citizen of the United States, and a resident and citizen of Los Angeles County, in the State of California.

That he is one of the grantees of the Rancho Ballona, granted November 27, 1839, by Juan B. Alvarado, Governor of the Californias. That he was present when the Juridical possession of said Rancho was given. That he knows well the deep gullies (*Barrancas*) and the Cotton-wood tree, (*Alamos*). That at the time the possession was given the Cotton-wood tree was about three feet in diameter, but was hollow and decayed. That because of the age and decayed state of the tree, there were stones placed at its roots, better to mark the place. That the deep gullies are about in the same condition they were at the time of the Juridical possession, and are objects easily found, and cannot easily be mistaken.

That at the time of the juridical possession affiant called Francisco Sepulveda to be present at the same, and he was present as also Maximo Alanis, another adjoining proprietor. That said Sepulveda then said he wanted a piece of the land and had asked for the same; whereupon the Judge who gave the possession, asked him if he had any document or grant, and he replied that he had not. That then the Judge told him that he must carry out the order of the Governor, and give the possession, and then proceeded to do so, drawing the cord from

the Barrancas to the cotton-wood tree. That Manuel Domingues was the Alcalde who gave the possession.

That affiant was present when the deputy, Hancock, made the survey in question. That Francisco Sepulveda died in 1853. That at the time of said survey, José del Carmen Sepulveda and Juan Maria Sepulveda, sons of Francisco, were present, and went with affiant and Hancock and pointed out and agreed upon the Barancas and the Alamos as the dividing line between San Vicente and Ballona.

That the lines, as run by said Hancock, are substantially the same as those of the juridical possession — the line between the Barrancas and the Alamos being run nearly on a right line between those points.

That affiant has within a few days past gone upon the ground, and now states that the points are well defined and easily recognized — the line being marked with piles of stones; and the pile of stones still remaining at the place where the Alamos stood.

Affiant further says, that the feature shown on the map of the Hancock survey as the "inner bay," is not a bay or arm of the sea, but that in times of storms and floods the waves of the sea close the mouth of the creek with sand, and thus cause the waters to rise and overflow the land. That the waters of said overflow are fresh and suitable, and are used for watering cattle and horses. That at this time nearly all of the land represented as an "inner bay" is dry land, and is used as pasturage.

Signed, IGNACIO MACHADO.

(Verified.)

Affidavit of Henry Hancock.

Henry Hancock being duly sworn says, he is the person who, as U. S. Deputy Surveyor in July, 1858, executed the final survey of the Rancho La Ballona, and that in the execution of the work in the field there were present at the point marked Station 31, (Barranca or gully), Jose del Carmen Sepulveda and Juan Maria Sepulveda, two sons of the late Francisco Sepulveda, confirmee of the Rancho San Vicente y Santa Monica, adjoining the Rancho Ballona on the North West. That they were present as the representatives of the said Rancho of Sepulveda, and as such claimed and pointed out the said Barranca or gully or the point where the two Ranchos, La Ballona, and San Vicente y Santa Monica, joined each other on the sea shore; and from that point the said Jose Carmen Sepulveda, whom I then supposed to be elder of the sons of the deceased Francisco Sepulveda, and who was then residing upon the Rancho, was efficient in riding ahead to the different stations of piles of stones along the plain, and pointing them out to me, in company with several other persons, up to what is on my map of the said survey, marked Station 35. That on arriving at that point, which is near a small dry arroya (not marked on the map) some 12 links wide, course south-westerly, the said Sepulveda, and the owners of Ballona agreed upon a point upon the right bank of said arroya, as the point where the Alamos (Cottonwood tree), called for in my instructions, as a point in the boundary line of La Ballona, once stood, and which point is designated on the map of Ballona as station 35.

That the aforesaid stations, from 31 to 36, were points claimed by the representatives of the two adjoining Ranchos, San Vicente y Santa Monica and La Ballona, as being the dividing line of the said Ranchos, and that while running the said line, no other points were suggested or talked about by any one. That at that time it was understood by the owners of both Ranchos, I was executing a survey of them both, but for want of time I

never completed the field-work of the survey of San Vicente y Santa Monica, and therefore never made returns of it to the office of the U. S. Surveyor General for California.

HENRY HANCOCK.

[*Verified.*]

Claimants' Statement and Diagram re Survey of Rancho La Ballona

A. J. Britton *W. J. Gray*

BRITTON & GRAY,
Attorneys at Law,
Patent titles from the United States to agricultural, mineral, and grant lands
N. 509. SEVENTH ST. MAY BUILDING.

Washington, D.C. April 11th 1873

Hon. Willis Drummond
Commissioner of General Land Office

Sir: We have the honor to file herewith for your consideration a statement and diagram in matter of survey of the Private Land claim "La Ballona" in Los Angeles Co. Cal.

Very Respectfully
Yr. Obt. Svrts.

Britton & Gray
Attys for La Ballona

In the matter of the Survey of the Rancho "La Ballona" finally confirmed to Augustin Machado et. al.

First — As to the objections set forth in the letter of the Hon. Commissioner of March 17th 1860, he is most certainly wrong in the construction which he puts upon the calls set out in the final Decree of Confirmation, Diseño, and Act of Judicial possession; and very inconsistent in his opinion as to the manner in which the Rancho should be Surveyed in conformity to said Decree, possession, xc. He must have been misled from the true facts of the case by some of the features of the Map of the Survey before him: although that Map corresponds remarkably well with the original Diseño. That portion of the map marked "Inner Bay" has evidently been considered by the Commissioner a portion of the Sea and not included in the Diseño or judicial possession (but this is not the case) he therefore directed this portion to be

excluded; by refering to the original Diseño it will be seen that the word "Estero" is found written on the same near the Sea Shore; this is the same place as that marked on the Map of Survey "Inner Bay" which is formed by the waters of the Ballona Creek, and is increased or diminished in extent as the outlet of the same to the Sea is more or less choked up by the shifting sands of the Sea Beach, from this cause some times quite a large area of land will be covered with the back water of the creek, and at other times there is scarcely any water at all on the land and the same is very rich, covered with a luxuriant growth of grass, and herbage, and is pastured by cattle, sheep, and horses, (See — Affidavits of Jose del Carmen Sepulveda, Tomas Talamantes, and Ignacio Machado — filed in the case) and as the water is at times increased or diminished by the before mentioned cause, and at times there is no water at all, and land being covered with a growth of grass, and pastured by cattle, horses, and sheep, there is no defined shore line to this so called "Inner Bay" and it can in no way be taken for the "Playa" (Sea Coast) mentioned in the Act of Judicial possession and Desiño, as a boundary.

The boundaries set forth in the Judicial possession, and Decree, are as follows: "Beginning at a cottonwood tree at a considerable distance from the house of Said Rancho, which is marked with hatchet cuts — thence running East or towards the East (rumbo al Este) "7835 Varas to a little pole bridge — thence South" or towards the South (rumbo al Sur) "9800 Varas to the Mouth of a Creek (Estero) thence West", or towards the West (rumbo al Oeste) "along the Sea Coast 7300 Varas to the deep gullies (Barrancas) — thence Northerly" or towards the North (rumbo al Norte) "7800 varas to the place of beginning".

Now the Commissioner suggests in his letter of March 17th, 1860, that the first line set forth in the foregoing description be run from the Cottonwood tree, the place of beginning of the Judicial possession (which is ascertained to be correctly located at Station No. 36 of the official Survey) on a course exactly East by the magnetic needle 7835 varas —

This line would cut the Rancho "Rincon de los Buyes" about half in two the distance (7835 varas) would extend entirely across that Rancho and some distance into the adjoining Rancho "Las Cienegas," and terminate in a level valley over a mile in any direction from a hill, while the Desiño (which is referred to, and made a part of the Decree of Confirmation) shows this line to terminate at the point of hills "lomas de los Carretos" — Now if the Commissioners Construction were a proper one that this first line should run exactly East, then the same application should also govern all the other lines of the Survey, for the terms used both in the Judicial possession, and Decree of Confirmation are exactly the same, in given the direction that each line shall run — for instance take the Judicial possession, the first line "*rumbo al* Este" — Second line "*rumbo al* Sur" — third line "*rumbo al* Oeste" — fourth line "*rumbo al* Norte". See the term used in each line is exactly the same. As is also in the Decree of Confirmation — first line *East* — Second line South — third line West, fourth line North. So if by the Decree the first line must be run exactly East, then by it also must the next line be run exactly South — but in doing so it would run entirely across the Ranchos Paso de la Tijera, and "Centinela" including a large area of each of those Ranchos within the "Ballona", and the distance (9800 varas) would terminate in the Rancho "Sansal Redondo" some six miles from the mouth of the Estero at which this line should terminate, according to the Judicial possession, and Decree of Confirmation, and upon the same ground, the same construction should be applied to the third line and it would run West & so on. It is unnecessary to follow this construction of the directions given in the Decree and Judicial possession further as we find that we can not apply it to a single line of the Rancho, and if it is applied to any one line it must with the same authority be applied to all of them.

But in directing the proper way to establish the Second line of the Judicial possession, the Commissioner seems to entirely abandoned the construction which he set out upon and adheared so closely to, in fixing the first line, for in determining the Second line he directs that it shall

be run without regard to the direction of the line as given in the Judicial possession and Decree, which as construed by him should be exactly South, but he suggests that this line be run from the termination of the distance of the first on a course exactly East from the Cottonwood tree (place of beginning) with-out regard to course" 9800 varas to a point on the shore a little to the East of the mouth of the creek "Ballona".

Now I take it that the Commissioner's idea is that this line should run to a point on the shore line on the so called "Inner Bay" a little to the East of the point where the Ballona Creek intersects the same, as shown on the Map of the Official Survey; this point it would be impossible to ascertain exactly; from the facts before stated; first the so called Inner Bay has no defined shore line; secondly the true and only mouth to the Ballona Creek is through the Estero in the South East corner of the Map of Survey and marked on same "Inlet." If this second line were run as suggested by the Commissioner — namely from the termination of the first line (run as suggested by him) to the designated point on the Map of Survey, the course of the line would instead of being South (as it should be according to his construction and application given in the first line) be a departure of about 50° West of South.

The third line he suggests should run along the Coast of the so called "Inner Bay" 7300 varas to the gullies (Barrancas). As it has been before shown there is no defined shore line to the so called Inner Bay — nor do we meet with any gullies untill we arrive at that laid down at the Westernmost corner on the Map of Survey — were the Northern extremity of the so called "Inner Bay" as shown on the map of Survey (if the same could be ascertained upon the ground) taken as the proper termination of the third line of the Act of Judicial possession (as suggested by the Commissioner) and the last line drawn from that point to the place of beginning (as also suggested by him) then the whole of that part shown and marked on the Diseño *"lomas muertos"* (dry or dead hills) would be excluded from the Survey of the Rancho.

Let us now look at the present survey now before the Commissioner and see how it compares with the original **Diseño, Judicial possession and Decree.**

The Cottonwood tree (the place of beginning) of the Judicial possession is ascertained to have stood at Station No. 36 on the map of Survey. The line runs thence Easterly to the point of a hill, by which passes a stream fringed with timber, and a road all of which corresponds with the features pictured upon the Diseño.

The Second line passes over some hills in a South Easterly direction as shown on the Diseño, and making an angle takes a general direction towards the South skirting along the hills on the East side of a valley and low grounds to the Sea Shore near the mouth of the Estero, as shown by the Diseño and Judicial possession.

The next line runs along the Sea Shore to the first deep gullies (Barrancos) which are met with. And from thence the last line is drawn to the place of beginning over, and including about the same proportion of the dead hill ("lomas muertos") as is shown by the Diseño. This encloses a tract of land which in shape, and points of topography corresponds remarkably well with the Diseño, and the course, and distances of the Map of Survey also agree as nearly as is usually the case with the directions and distances given in Acts of Judicial possession, for in performing such acts they did not except in a few instances use any instruments for ascertaining the exact courses of the lines, and the directions of the lines are only intended to be given approximately, for instance as in this case "rumbo al Este" (towards the East) this term is not intended as a due East course (as construed by the Commissioner) but a line running in the direction towards the East or Easterly which would be just as applicable to a line running South East, as to one running East, and so on with regard to all the lines of this Rancho. The measurements were also made in the rudest, and most careless manner, and in this case they correspond as nearly as in most cases where accurate measurements are made on the ground. On most of the lines the Surveyor has laid down on his Map of Survey

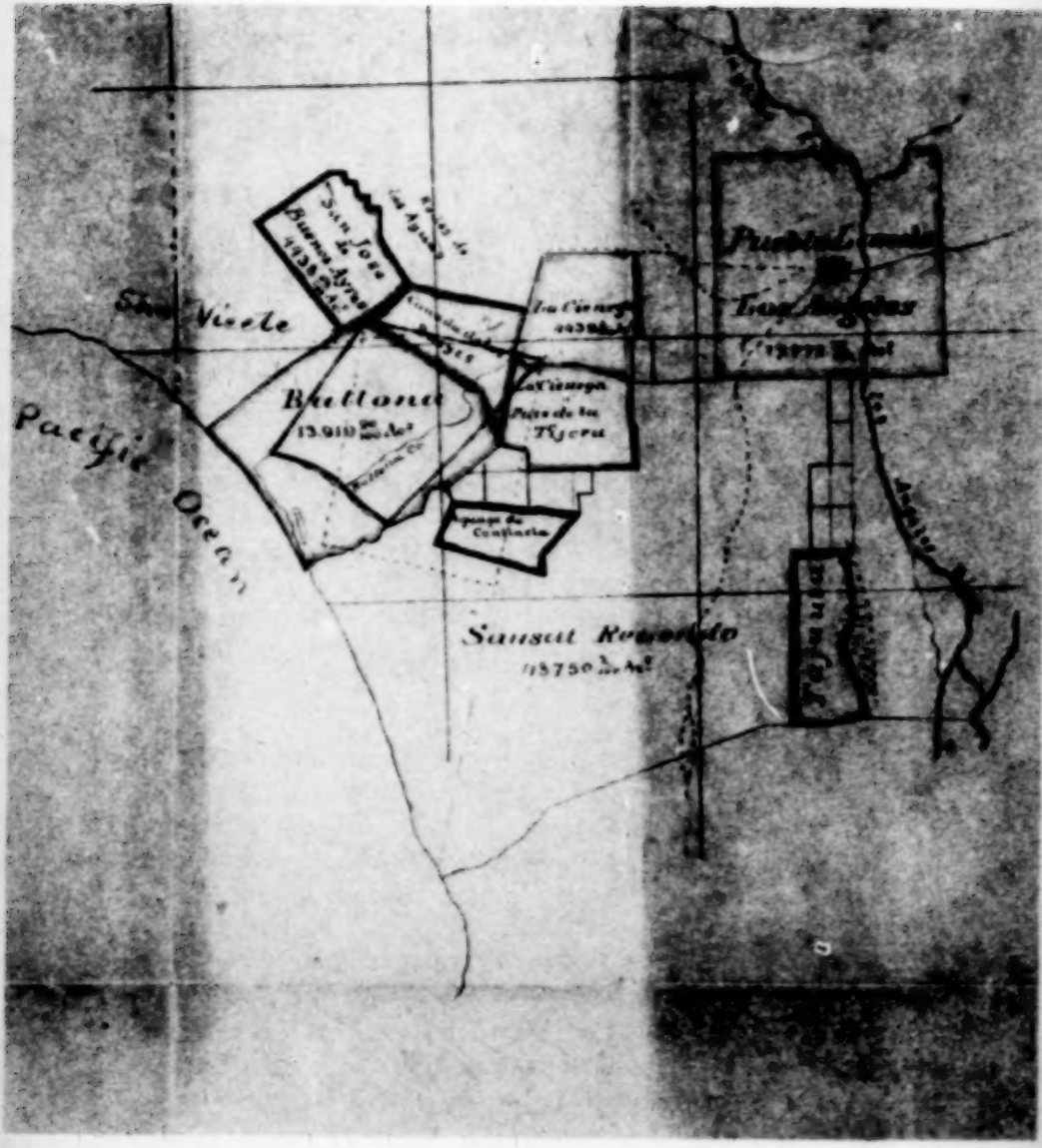
"Old Corner," or "Original Corner" — this taken with the fact that this Rancho is formed upon the North East, and South East by other grants, the claimants of which make no objections to the Survey, shows very conclusively that those two lines are correctly established by the Official Survey; and were these lines now disturbed or changed, it would create conflicts which would lead to long and expensive litegation against the will of all parties interested. There can be no doubt also as to the Southern boundary having been correctly established by the Official Survey — for it is in accordance with the Diseño, Act of Judicial possession, and Decree of Confirmation, the latter making use of the expression *"along the Sea Coast"*, and the 7th Section of the Act of Congress of July 1st 1864 requires that the Survey shall be made in strict accordance with the Decree of Confirmation.

The North Western boundary must also be correctly established by the Survey now before the Commissioner, for it runs from the *first* and *only deep gullies* (Barrancas) which are met with on the Sea Shore, between the mouth of the Estero, and that point, and corrisponds with the Diseño in embracing about the same proportion of dead hills ("lomas muertos") within the Rancho, as are represented by it. There was no objection, or dispute as to this being the correct line between the Ranchos "San Vicente" and "La Ballona" at the time the Survey was made — nor for many years thereafter. On the contrary this very line was pointed out to the Surveyor on the ground at the time he was executing the Official Survey as the dividing line between the two Ranchos, by two sons of Francisco Sepulveda, who represented their farther, the Confirmee of the former Rancho on that occasion, and the same line was then, and there agreed upon by all parties interested as the true and correct boundary line between the two Ranchos (See the affidavits of Henry Hancock Ignacio Machado, Tomas Talamantes, and Jose del Carmen Sepulveda, on file in the case). All parties interested in this and the adjoining Ranchos knew at the time of the Survey being made, and of the lines of the Rancho being thus established, the Survey was duly advertised, and about ten years elapsed

after said Survey was made before any objection was made to it, in behalf of any adjoining Rancho, and the Sons, and family of Francisco Sepulveda the confirmee of the "San Vicente" still disclaim that they, or their father ever pretended to claim any part of the land now contested by Haley and others, as part of his grant.

The Rancho is certainly entitled to a patent as sent up, and no other Survey can be made to harmonize so nearly with all the Calls set out in the Judicial possession, Diseño, and Decree of Confirmation.

Britton & Gray
Attys. for La Ballona


San Vicente
Pacific Ocean
Ballona
13.910 Acres
Sunset Rancho
13750 Acres

Letter from Willis Drummond

R. Hardenbergh, Esq.,
U.S. Surveyor General
San Francisco, Cal.

Department of the Interior
General Land Office
Washington D.C.
Apr. 30, 1873

Sir;

This office has had under consideration the papers in the matter of the rancho Ballona in California. Augustin Machado et al. confs. a survey of which containing 13,919$^{99}/_{100}$ acres, was made by Deputy Surveyor Henry Hancock in July, 1858, approved by the Surveyor General of California Sept. 18, 1858 advertised in September and October, 1860, and re-advertised in 1869.

The original grant was made on the 27th, Nov. 1839, by Juan B. Alvarado, then Governor of the Department of the Californias, to Augustin and Ignacio Machado and Felipe and Tomas Talamantes for "the land known by the name of Ballona, bounded on the West by the ranch of the citizen Policarpio Higueroa, on the North by that of the citizen Alanis; on the West (poniente mistake for Este) by that of the citizen A. Ignacio Abila, and on the South by that of the Sr. Jose Sepulveda." Juridical possession of the land granted was given on the 31st December, 1839 with the following described boundaries, to wit: "From the cotton-wood tree, to which cuts of a hatchet were given, to serve for a land mark a direction to the East were measured and counted seven thousand eight hundred and thirty-five varas, terminating at a little pole bridge which was fixed for a land mark at which point was the adjoining neighbor, Don Policarpio Higuera, he not having manifested any objection it was given for a perpetual measurement. From thence the cord was stretched a direction towards the South, and were measured and counted nine thousand and eight hundred varas which terminated at the mouth of a creek (estero) a place which was fixed for a land mark, but when it was measured Antonio Ignacio Avila charged that this situation or place belonged to him, and having asked

him for the documents which would prove it his property he did not present them, but said the plat (diseño) was in Monterey for which cause it was fixed for a measurement. Proceeding to stretch the cord towards the west there were measured along the Sea-coast seven thousand and three hundred varas, which terminated at a point called the deep gullies ('barrancas') a situation which was fixed for a land mark. From there the rope was stretched in a direction towards the North, taking a course so as to strike the cotton-wood tree, whence the measuring was commenced, and there were measured seven thousand and eight hundred varas, the adjoining neighbors being Francisco Sepulveda & Maximo Alinis, the former although he indicated that he had asked the Government for a small piece of this land; but as he did not present the memorial ('constancia') nor documents these were continued, and the measurement given."

The petition of the claimants soliciting the confirmation of their claim was presented on the 2d day of October, 1852, to the Board of Land Commissioners and on the 24th of February, 1854, the said Board rendered a decree of confirmation for the land as described in the record of Juridical possession and on appeal to the District Court of the United States for the Southern District of California the decision of the Board of Land Commissioners was confirmed at the December Term 1855 of said Court, and it was "further ordered adjudged and decreed that the claim of the appellees to a certain tract of land in Los Angeles County, West of the City of Los Angeles — about three leagues and bordering on the sea shore called the 'Ballona' is valid, that said tract of land being the same now and for the last 18 or 19 years occupied by the appellees, and bounded as follows viz: Beginning at a cotton-wood tree at a considerable distance from the house of said rancho which is marked with hatchet cuts, thence running East 7835 varas to a little pole bridge thence South 9800 varas to the mouth of a creek (Estero) thence West along the sea coast 7300 varas to the deep gullies (Barancos) thence Northerly 7800 varas to the place of beginning; reference for a more particular description being had to the grant, map and juridical

possession on file in this case." At the Dec. Term, 1856, of said court the appeal to the Supreme Court of the United States was dismissed and the decree rendered on the 19th day of December, 1855, made final.

A survey of this rancho was made by Henry Hancock in July, 1858, approved by the U.S. Surveyor General for Cal'a, on the 18th of Sept. 1858 and transmitted to this Office immediately thereafter, which said survey after examination here, was returned to the Sur. Gen'l. on the 17th day of March, 1860, for re-examination, and "unless good cause be shown to the contrary, after notice to all concerned, for amendment of the survey in conformity to the views of this office as set forth in" said letter of March 17, 1860. What those views were it is not necessary now to examine, for before the survey was amended the Act of July 1st 1864, (13 stats. p. 332) was passed; the Honorable Secretary of the Interior by letter of November 19th, 1868, directed this survey to be published under said Act; and the said survey having been so published in March and April, 1869 was duly objected to in accordance with the provisions of said Act, and is therefore now before this office, on its merits, without regard to any opinion expressed by this office prior to said publication.

This rancho was confirmed by boundaries and these boundaries are clearly set forth in the final decree of confirmation. The survey now under consideration must conform to said boundaries as explained by the reference in the decree to the grant, diseño and juridical possession.

For convenience I commence the examination of this survey by a consideration of the line drawn between two of the natural objects mentioned in the record of juridical possession and final decree in this case, to wit, the barancas or deep gullies and the alamos or cottonwood tree, the last of which is described in the record as the place from which juridical measurement was commenced.

The first named of these natural objects is not shown on the diseño of the Ballona rancho, nor is it mentioned in any of the original papers filed in this case before the

Board of Land Commissioners for Cal'a, except in the juridical possession where it is described as having been reached by measuring from the mouth of an estero, West, along the sea-coast seven thousand three hundred varas. On the present survey these gullies are located at the extreme south-western corner thereof.

The second of these natural objects is not particularly described on the diseño in this case, though at the Northwest corner of said diseño is marked "laguna del Alamo y lindero del ser Alamis" (lake of the cottonwood and boundary of Senor Alamis). The directions of the lines run, as given both in the juridical possession and final decree, show however, that this cottonwood tree was at the northwest corner of the Ballona rancho, a "long distance" west from the "house" of said rancho, and also west 7835 varas from "a little pole bridge," and in making the survey now before me the deputy surveyor has scaled the site of said cottonwood at the northwest corner of his survey, and at the intersection of the southern line of the rancho Rincon de los Buyes, granted in 1821, and 1843, to B. Higuera and patented Aug. 27th, 1872, with the southeastern line of the rancho San Jose de Buenos Ayres granted in 1843, to M. Alamis and patented July 25th, 1866. Less than forty chains east from this point, as appears by the field-notes of the survey in this case, is a dry lake ten chains from east to west and three chains from North to South, thus apparently answering the description of the northeastern corner of this rancho on the diseño where is found the "lake of the cottonwood and the boundary of Alamis" i.e. rancho San Jose de Buenos Ayres. The diseño further shows the Western boundary of the Ballona to be the eastern boundary of Sepulveda's rancho San Vicente, and the record of juridical possession shows that this boundary of Ballona was also the eastern boundary of a part of Maximo Alimas's rancho, the last of which was patented by the U.S. in 1866 as before stated. It also appears by an inspection of the diseño, and of the plat of Hancock's survey that the relative position of the northwest and southwest corners and the creek as shown on both diseño and plat, is substantially the same.

The testimony filed by contestants relative to this boundary is as follows:

Fernando Sepulveda in an affidavit dated April 26th, 1869, before A. E. Sepulveda, Deputy Clerk of the Dist. Court for Los Angeles Co. Cal'a, testifies that he was raised upon the rancho San Vicente y Santa Monica; that his father was the grantee of said rancho; that at the time of Juridical possession of said rancho in 1828, the east boundary line was established by measuring from the head of the arroyo Seca at a place called Cañada de mangles and ending at the opening of said arroyo into the sea at a place called deep gullies and including the Laguna de los Alamos and loma colorada; that the deep gullies are very near the margin of the estuary of the seca in the Ballona rancho; that the Ballona rancho never extended west of a north and south line running from the loma colorada to the deep gullies; and that the survey of the Ballona as now made running from the arroyo seca, south west to the ocean, embraces a large portion of the rancho San Vicente y Santa Monica. There is also filed on behalf of contestants an affidavit dated May 3, 1869, signed by Salesburg Haley and Jose Dolores Sepulveda to the effect that they are the owners of the San Vicente y Santa Monica confirmed to Ramon Serrano Sepulveda L.C. No. 457, which rancho adjoins the rancho Ballona on the west; that they are familiar with all the boundaries of the rancho owned by them as marked out in 1828, by Jose A. Carillo; that the east boundary line of said rancho embraces the following known objects, to wit, the "Canada de Mangles, the Arroyo Alamis or seca, the laguna de Alamo, the table land to the loma colorado, thence in a direct line to the deep gullies at the sea beach near to the estuary of the Ballona;" and that the present survey of the rancho Ballona embraces a large tract of the rancho San Vicente y Santa Monica.

In opposition to the statements contained in the foregoing, there was filed in behalf of the owners of Ballona with the Sur. Gen'l the following affidavits:

1st Affidavit dated Jan'y 29, 1870, by Jose del Carmen Sepulveda in which he states that he is 47 years of age,

a citizen of Los Angeles, and the son of Francis Sepulveda claimant for the rancho San Vicente adjoining the Ballona on the northwest; that he is well acquainted with said ranchos and was present when juridical possession was given by the Mexican authorities of the line between said ranchos, and knows the position of the cottonwood (alamos) trees and the deep gullies (barrancas); that the tree decayed and fell to the ground and thereafter the place where it stood was marked by a pile of stones; that the deep gullies are prominent and easily known, and that the corners fixed by the U.S. Surveyor Hancock are at the identical places where the alamos stood and where the barrancas now are and were at the time of juridical measurement; that the line of Hancock's survey between those two points is substantially the line of the juridical possession; and that for many years before Hancock's survey this line has been recognized as the dividing line between those two ranchos.

2d. The affidavit dated Jany 29, 1870, by Tomas Talamantes in which affiant states he is 78 years of age a resident of Los Angeles and one of the grantees of the rancho Ballona granted by Alverado, and was present when the juridical possession of said rancho was given in 1839; that the line of the juridical survey between the Ballona and San Vicente ranchos was a direct line from the cottonwood trees to the deep gullies; that the line of Hancock's survey between these two points is substantially that of the juridical possession; that he was also present when possession was given of the rancho San Vicente in 1846, as was also Francis Sepulveda and Augustin Machado; that a line was run from the cottonwood to the barrancas which was the same as that established in 1839, as the line of the rancho Ballona, and that Sepulveda, Machado, and affiant agreed to the same.

3d. An affidavit dated Jan'y 29, 1870, by Ignacio Machado in which affiant states he is 80 years of age, a resident of Los Angeles, Cal'a, and one of the original grantees in 1839 of the rancho Ballona; that he was present when juridical possession was given of said rancho, knows the position of the cottonwood tree and

deep gullies, the former of which was then about three feet in diameter and because of its decayed state stones were placed at its roots the better to mark the place; that said tree is now destroyed, but the pile of stones at the date of this affidavit was in about the same condition as when juridical possession was given, easily found and not easily mistaken; that when the possession of the Ballona rancho was given in 1839, Francisco Sepulveda (who died in 1853) was present and said he wanted a piece of the land but upon being asked by the judge if he had any document or grant he replied he had not, whereupon the alcalde (Dominguez) ran the line from said cottonwood to the barrancas; that when, Hancock made the survey of the rancho Ballona, Jose del Carmen Sepulveda, and Jose Maria Sepulveda sons of Francisco Sepulveda were present and went with affiant and Hancock and pointed out and agreed upon the Barrancas and the Alamos as the dividing line between San Vicente and Ballona, and that this line as drawn by Hancock is substantially the same as that of the juridical possession.

4th. An affidavit dated Feb'y 3d, 1870, by Henry Hancock who swears he is the U.S. Deputy Surveyor who, in 1858, made the survey now under consideration; that at the point marked on the plat of his survey "Station 31. Barranca or gully," Jose del Carmen Sepulveda and Juan Maria Sepulveda were present as the representatives of the rancho San Vicente y. Santa Monica and pointed out said barranca or gully as the place where the rancho San Vicente and Ballona joined each other on the sea shore; that from that point Jose Carmen Sepulveda who was then residing on the ranch was efficient in riding ahead and pointing out the different piles of stone along the plain up to what on the plat of affiants survey is marked "Station 35;" that on arriving at that point, "which is near a small dry arroyo (not marked on the map) some twelve links wide, course southwest, the said Sepulveda and the owner of the Ballona agreed upon a point on the right bank of said arroyo, as the point where the Alamos or cottonwood tree, called for in my instructions as a point in the boundary line of La Ballona, once stood;"

that the stations on said map from 31 to 36 were claimed by the representatives of the ranchos San Vicente and Ballona, as the dividing line of said ranchos; that while running the said line no other points were suggested or talked about by any one; and that at the time of the survey it was understood by the owners of both ranchos that affiant was making the survey for both ranchos.

From a careful review of the foregoing it is clear that the weight of evidence is to the effect that the western boundary of the Hancock survey of the rancho Ballona was correctly located according to the calls of the grant as given in the final decree and record of juridical possession; thus corroborating the apparent location of said boundary as shown by a comparison of the original title papers of the Ballona rancho with each other and with the boundaries of adjoining ranchos. The length of this line according to the measurements given in the final decree and record of possession is 7800 varas equal to about 330 chains; the distance between the barrancas and site of the cottonwood as shown by the U.S. survey is about 360 chains a difference of 30 chains, or $\frac{3}{8}$ of a mile.

From the cottonwood the boundary on the north extends east, according to the final decree and record of possession 7835 varas to a "little pole bridge." Where this bridge is located is not shown by any evidence in the case; yet near the northeast corner of the diseño is a stream of water running north and south to an estero near the ocean, from which it is probable that this stream passes near said bridge. On the plat of Deputy Surveyor Hancock's survey the northeast corner thereof is placed near said stream, and to that extent corresponds with the diseño; and as said northern boundary of the rancho Ballona, as shown by said survey adjoins for its entire length the rancho Rincon de los Bueyes which has been patented by the United States and as the length of said line east from the site of the cottonwood to the northeast corner as shown by the survey, is 90 chains, or more than one mile shorter than the length of said line as shown in the record of possession and final decree, I accept as the

true boundary on the north the line as run by Hancock and represented on the plat now under consideration.

From the northeast corner the boundary on the east extends according to the final decree and record of possession south 9800 varas, equal to about 413 chains to the mouth of an estero. That this boundary is not a straight line appears by the diseño, and upon an examination of the U.S. Survey it also appears that the general shape of this boundary as given on the diseño has been preserved in said survey, that is to say, from the northeast corner it runs a short distance south and east and then, according to the diseño, due south, but according to the U.S. Survey south and west to the ocean making the entire survey form a nearly square figure. As before stated the call for the south-east corner of this rancho is the mouth of an estero, or where it empties into the ocean, which point as shown by the plat and field notes of the survey by Hancock is at some place east of the south-east corner of said survey and wholly outside its limits. The character of this estero, or inner bay as it is marked on the plat of survey, is testified to by Tomas Talamantes, Jose del C. Sepulveda and Ignacio Machado, who in substance say it is not an arm of the sea, and that much of the tract represented as inner bay is suitable for pasturage. That this estero was included in the grant is shown by the diseño where the word "estero" is written near the south boundary and about midway between the east and west boundaries as there represented, and that it is not an arm of the sea is evident from the field notes and plat of survey which are not contradicted by any evidence in this case, and which show that what this office in 1860, mistook for the mouth of an estero was meandered on its south-east side to within a few chains of the ocean, and that on the east of said meandered line were found high hills, that this inner bay is not an arm of the sea and that the mouth of this estero is wholly outside the present survey of the Ballona rancho is also shown by an official survey of the rancho Sansal Redondo which adjoins the southern portion of the eastern boundary of Hancock's survey of Ballona.

The eastern boundary of this rancho as surveyed by Hancock is therefore approved and so too is the South boundary as thus surveyed, though it is apparent that had the claimants or any party in interest objected to this survey the eastern terminus of the South boundary and the southern terminus of the eastern boundary might have been extended, according to the final decree on title to the mouth of the estero above mentioned, that is to say to where it empties into the ocean.

As has been already remarked the diseño and the plat of Hancock's survey in this case each inclose a tract of land of nearly square form; and to this I add that the aggregate number of lineal varas measured by the Mexican Alcalde in giving juridical possession as shown by the record thereof, give, when reduced to chains, a distance nearly as great as that run by U.S. Deputy Surveyor Hancock and represented on the aforesaid plat of survey. The distances from point to point are as follows:

According to the record of possession and final decree, from the cottonwood east to the pole bridge is 7835 varas, equal to about	335 chains.
Thence south to mouth of Estero 9800 varas, equal to about	410 chains.
Thence west to the barrancas 7300 varas, equal to about	308 chains.
Thence north to the cottonwood tree 7800 varas, equal to about	330 chains.
A total length of	1383 chains.
According to the plat of survey, a direct line from the site of the cottonwood east to the northeast corner is about	240 chains.
Thence south and east to point marked no. 2; and thence to southeast corner of survey, is about	520 chains.
Thence westerly to barrancas is about	335 chains.
Thence northerly to cottonwood site is about	360 chains.
A total of	1455 chains.

thus showing the total distance measured by the Alcalde to be 17 miles and twenty-three chains, and the total distance from point to point as established by Hancock 18 miles and 15 chains, making a total difference between the two measurements of but 72 chains or nine tenths of a mile.

From the foregoing facts I decide that the survey under consideration containing 13,919$^{99}/_{100}$ acres and made by U.S. Deputy Surveyor Henry Hancock in July, 1858, should be approved by this office.

You will give notice of this decision to all parties in interest and allow sixty days from the service thereof for appeal to the Hon. Sec. of the Interior, at the expiration of which time you will make the usual return.

Very respectfully,

Willis Drummond
Commissioner

Contestants' Appeal of
General Land Office Decision

U. S. SURVEYOR-GENERAL'S OFFICE,
San Francisco, July 22, 1873.

Hon. Willis Drummond
Com. Genl. Land Office
Washington, D.C.

Sir:

I have the honor to transmit a statement on appeal filed in this office June 12 last, in the case of the Rancho "Ballona" appealing to the Hon. Secretary of Interior from your decision in said case.

Upon the receipt of your decision I notified all parties in interest requiring appeal to be taken on or before the 12th inst.

The appeal of Messrs Haley and Sepulveda herewith is the only document filed in said case in response to the notices served.

Very Respectfully

Your Obt. Servt.
J. R. Hardenbergh
U.S. Sur. Genl.
for California

Hon. Willis Drummond
Commissioner of the General Land Office
Washington, D.C.

Sir:

Please take notice that in the case of the Survey of Rancho Ballona in Los Angeles Co. California, decided by you in April 1873, S. Haley and J. D. Sepulvada protestants claiming title in the Rancho "San Vicente y Santa Monica" to lands embraced within the bounds of said Survey, hereby appeal from the decision rendered by you in said case, to the Hon. Secretary of

the Interior, and for grounds of appeal cite the following points of exception —

1st That said decision is contrary to law:

2nd That said decision is contrary to the Record evidence in the case.

3rd That said decision is not in accordance with the final decree of confirmation.

4th That said decision is founded on evidence, contradicting the Mexican documents filed in the case.

This Grant is by boundaries (as stated in the decision (The Map (Diseno) was the only description, of those boundaries, in all the proceedings of the Mexican Government, in the case up to the time of the Juridical possession by Manuel Domingues Alcalde, Decr. 1839, except the recitals in the petition and Grant, towit: "That it was bounded by Alanis-Higuera-Abila and Sepulveda and that it was one league of land."

The West line of this Survey is alone in controversy with us which we claim largely encroaches upon our land in the adjoining Rancho of Sepulveda.

The Map (Diseno) having been the basis of description in forming the entire Expediente in this case, should as the key to this Survey, be closely scanned in this proceeding by the Land Office.

The Map (Diseno), describes this West line of the Grant by unmistakeable natural objects, as follows. The North West corner is fixed at the Cottonwood lake (Laguna del Alamo) and the South West corner is defined by the name "barrancas," deep gullies, or a water slough, and the line, connecting these water reservoirs in the two Westward corners, runs North by West & South by East, and is marked on the Map (Diseno) "Sanjones" the name signifies that it runs to natural sloughs of water, which is verified by the fact that on the North, it has the Cottonwood lake (Laguna del Alamo) and on the South the slough formed by the ocean, the termination of the arm of the Sea.

The Juridical possession was a proceeding by the local alcalde, and intended only to mark the boundary lines of the Grant, and put the Grantee in possession, with the formalities of law (but not to enlarge or diminish the Grant). Manuel Dominques was the Alcalde in the proceeding in this case — He fixed the initial point at the Cottonwood lake (Laguna del Alamo) in the North West corner of the Grant, there was the Cottonwood tree with hatched marks. He thence run the first line East 7835 varas. Thence South 9800 varas to the mouth of a creek, which empties into the North East part of Estero or Bay (See Map). Thence along the beach of this bay West 7300 varas to the barrancas, or deep gullies, or sloughs of the Bay and at the South end of the West line "Sanjones" of Grant, that runs South by East from the lake in the North West corner thereof called "Cottonwood Lake" (Laguna del Alamo), take all these objects together as features of the country described upon the Map, and they not only fix this point, the South West corner of the Grant, but they unmistakeably fix the mouth of the creek and the route of the line along the inner beach of this Bay.

The Map (Diseno) having been the only description to guide the Alcalde, except the recitals of the neighbouring occupants, must be strictly adhered to in determining the West line of this Survey, for Sepulveda defiantly Stands on the South West Side, protected by the recitals, in this Grant, besides his ancient possessions, and the Alcalde knew that he could not include in this Survey the arm of the ocean without express authority —

Commissioner Wilson rejected this Survey because it embraced the Arm of the Sea, and sent it back, for the double purpose, of having it published under the Act of July 1st, 1864, and having it corrected in the manner designated by him —

The rejection and our exceptions, on the publication, brought eminent counsel into the case, who saw at a glance, that the two water ponds, in the Map and upon the premises, presented an irresistable barrier, to the retaining the Plains of San Vicente in the bounds of the

Survey; taking the cue from Judge Hoffman's decisions as to Mexican witnesses on land titles, they brought to light the Affidavits herein filed, which declare that this Arm of the Sea, specially designated upon the (Diseno), on Hancocks Map of Surveys, and on this County Map, and whose limped Surface is daily whitened with Sails of Will Tell's Hotel, numerous pleasure boats, had dried up, grown over with grass, and now pastured with cattle; and that the Cottonwood *tree*, the initial point was situated in the San Vicente plains — loosing sight altogether of Cottonwood Lake. (Laguna del Alamo) — A Cottonwood tree can grow as well in the dry plains, as cattle can pasture in three fathoms of salt water, and no better —

We filed in the case the Map of San Vicente y Santa Monica, by which the final decree of confirmation was made. This Map was made in May 1843, by J. J. Warner, Surveyor by the directions of this same Manuel Dominguez then Prefect, under the eye of Governor Michelterranos, for the double purpose, of settling adverse claims to Sepulveda's land, and to give him Juridical possession anew — That Map shows the Cottonwood Lake (Laguna del Alamo) and loma colorado, on the line "Sanjones", to be the East line of Sepulveda's land, besides other natural objects, not designated on Ballona Map — It also shows in the South West corner, a dotted line with writing by it "that Machado claims, from this line to South East Stations, for which he has no juridical possession" — here the identical M. Dominguez, who gave Machado juridical possession in 1839, declares in 1843, that Machado has no juridical possession of the piece of land he grabbed in Hancock's Survey, and now under these exceptions, is the only subject of controversy —

For years, the U.S. Surveyor General J. R. Hardenburgh admitted that the two Maps of these adjoining Ranchos made by the same Alcalde (Domingues) three years apart, and both describing the same natural objects along the partition boundary line, should be taken together in the determination of this Survey, and engaged most Solemnly that both Surveys should be sent on to-

gether, as Sepulveda's was made in July 1868, and retained under the pretext that the "Boca de Santa Monica" finally confirmed in 1859, and not yet surveyed, encroached on the Sepulveda Survey, though the Act of July 23rd, 1866, was known to him —

About November 1871, General Hardenb[illegible]gh sent C. R. Hopkins here at our expense. He in the presence of seventy witnesses, went along the line of the two Ranchos, sketching the natural objects; to wit: — "Laguna del Alamos" — Loma Colorada, and in fact, all those described on the two Maps: — If he made a report, I don't know it, the decision makes no reference to it; —

Hopkins on looking on this inner Bay said, "What a beautiful Sheet of Water this Ballona Bay is" — without regard to the Mexican affidavits.

In conclusion we ask —

1st That the Map used exclusively as the description of the Grant by the Mexican Government may be used as the inflexible evidence in the determination of this Survey —

2nd Should any variance appear in the Juridical possession from the Grant as described by the Map, that the former may be made to yield to the latter, as an Alcalde could not alter the Governor's Grant;

3rd That the Map of San Vicente y Santa Monica, filed in this case, may be referred to for the purpose of corroberating the East line of the Ballona Grant and Map.

Respectfully submitted

S. Haley & J. D. Sepulveda
in propia personas

Los Angeles June 9, 1873

Letter from C. Delano

DEPARTMENT OF THE INTERIOR

Washington, D.C.
November 19, 1873

Sir:

I have examined the papers in the matter of the Rancho Ballona, Los Angeles California, on appeal from your decision of April 30, 1873.

The claim of the grantees was duly confirmed by metes and bounds by the District Court, and this decree of that tribunal became final by dismissal of an appeal to the Supreme Court. A survey of the ranch was made in 1858; said survey was approved by the Surveyor General, was readvertised under the act of 1864, and having been approved by you, now comes before the Department upon an appeal by the owners of the Rancho San Vicente y Santa Monica, who allege that the northern (or northwestern) boundary of the Ballona, as surveyed, overlaps the southern (or southwestern) boundary of the rancho San Vicente as confirmed to the claimants thereof.

The facts in the case and the depositions of witnesses relative to controverted questions, are substantially and correctly recited in your decision, from which it appears that the weight of evidence establishes the correctness of the survey now before me, in its location of the northern (or northwestern) line of the Ballona, according to the decree of confirmation. That decree establishes the boundary in question from point to point by reference to natural monuments, and I am satisfied that these monuments are correctly located by the Hancock survey.

I therefore affirm your decision and return herewith the papers transmitted with your letter of August 12, 1873.

Very Respectfully

C. Delano
Secretary

Hon. Willis Drummond
Comr. Genl. Land Office

United States Patent for Rancho La Ballona

The United States of America
To all to whom these presents shall come
Greeting:

Whereas it appears from a duly authenticated transcript filed in the General Land Office of the United States that pursuant to the provisions of the Act of Congress approved the third day of March One thousand eight hundred and fifty one entitled "An Act to ascertain and settle the Private Land Claims in the State of California" Augustin and Ignacio Machado and Felipe and Tomas Talamantes as claimants, filed their petition on the second day of October Anno Domini One thousand and eight hundred and fifty two with the commissioners to ascertain and settle the private land claims in the State of California sitting as a Board in the City of Los Angeles in which petition they claimed the confirmation of their title to a tract of land known by the name of "Ballona" situate in the County of Los Angeles and State aforesaid said claim being founded on a Mexican Grant to Augustin and Ignacio Machado and Felipe and Tomas Talamantes made in the twenty seventh day of November A.D. One thousand eight hundred and thirty nine by Juan B. Alvarado then constitutional Governor of the Department of the Californias.

And whereas the Board of Land Commissioners aforesaid on the fourteenth day of February Anno Domini, One thousand eight hundred and fifty four in the cause entitled "Augustin Machado, Ignacio Machado, Felipe Talamantes and Tomas Talamantes vs. the United States" rendered a decree of confirmation in favor of the claimants which said decree or decision having been taken by appeal to the District Court of the United States for the Southern District of California the said District Court at its December Term 1855, in the cause entitled "Augustin Machado et al Appellees ads. The United States appellants" rendered its decree as follows to wit:

It is ordered adjudged and decreed that the said decision be confirmed and it is further ordered adjudged and decreed that the claim of the appellees to a certain tract of land in Los Angeles County west of the City of Los Angeles about three leagues and bordering on the sea shore called Ballona is valid, that the said tract of land being the same and for the last 18 or 19 years occupied by the appellees and bounded as follows viz. Beginning at a cottonwood tree at a considerable distance from the house of said rancho which is marked with hatchet cuts, thence running east 7835 varas to a little pole bridge thence south 9800 varas to the mouth of a creek (Estero). Thence west along the sea coast 7300 varas to the deep gullies (barrancas) thence northerly 7800 varas to the place of beginning reference for a more particular description being had to the grant map and judicial possession on file in the case.

And thereafter a stipulation having been made by the attorneys of the parties in interest that appeal in this case would not be prosecuted to the Supreme Court of the United States and filed in the aforesaid District Court. The said District Court at its December Term A.D. 1856 ordered adjudged and decreed That the order granting the appeal to the Supreme Court be revoked and that the decree of confirmation heretofore made by this Court in the said cause to wit: On the 19th day of December A.D. 1855 be and the same is now hereby made final. Whereby the proceedings Court upon title became final.

And whereas under the 13th Section of Said Act of 3 March 1851 and the supplemental legislation and in accordance with the proceedings had pursuant to said act and supplemental legislation there has been deposited in the General Land Office a return with the descriptive notes and plat of survey of the said claim confirmed as aforesaid authenticated by the signature of the United States Surveyor General for the State of California which descriptive notes and plat of survey are in the words and figures as follows to wit:

U.S. Surveyor General's Office
San Francisco, Cal.

Under and by virtue of the provisions of the 13th Section of the Act of Congress of the third of March 1851 entitled "An Act to ascertain and settle the private land claims in the State of California" and of the 12th Section of the Act of Congress approved on the 31st of August 1852 entitled "An Act making appropriations for the civil and diplomatic expenses of the Government for the year ending the 30th of June 1853 and for other purposes" and whereas the U.S. District Court for the Southern District of California rendered a decision whereby it recognized and confirmed the title and claim of Augustin Machado *et als.* to the tract of land designated as the Ballona in Los Angeles Co. as appears from the certified copy of the final Decree of the said District Court a copy of which is hereto annexed. The said tract of land was surveyed in conformity to the grant thereof and the said decision, And I hereby certify that the accompanying map is a true and accurate plat of the said tract of land as appears by the field notes of the survey thereof made by Henry Hancock, Deputy Surveyor under the direction of this office which having been examined and approved remain of record therein, said tract of land is described in the words and figures following viz.

Beginning at a pile of rubble rocks each some nine inches in diameter on a high conical hill being the north western terminus of a range of hills on the east.

Thence according to the true meridian the variation of the magnetic needle being thirteen degrees thirty minutes east, south twenty one degrees fifteen minutes east, ascending the ridge eighty chains to the top and along the same one hundred and seven chains and twenty one links to a sandstone rock, twenty one inches in diameter and two small rocks. Station.

Thence south forty eight degrees thirty minutes west one hundred chains to the base of hills one hundred and eight chains to the base of a spur from the east. One hundred and twenty five chains to a stake on a spur from the north east about four chains south of a lake of water some fifteen chains long and five chains wide. Station.

Thence south twenty three degrees forty five minutes west, at one chain and fifty links crosses a road, course east four chains to a stake. Station.

Thence south seventy six degrees thirty minutes west, at three chains enters the mouth of a cañada from the north east, at three chains and fifty links crosses a stream fourteen links wide course south eight chains and eight links to a stake and charred stake at intersection with the east boundary of Township Two, south range fifteen west eleven chains and fifty links north of a quarter section corner on the east boundary of section twenty four, twenty five chains across a cañada to the north base of hills thirty four chains and eight links to a large rock, the original corner and. Station.

Thence south twenty four degrees forty five minutes west thirty two chains to a stake on the north west base of the hills. Station.

Thence south seventy two degrees thirty minutes west along the base of hills thirty two chains and thirty three links to a stake. Station.

Thence south sixty six degrees, thirty minutes west along the north base of hills nineteen chains and sixty two links to a stake at the north east corner of a decayed corral. Station.

Thence south sixty four degrees fifteen minutes west nineteen chains and fifty links to a stake at base of hills. Station.

Thence south fifty four degrees thirty minutes west, five chains to a point opposite the south east head of a Bay twenty three chains to a stake on the west base of the hills thirty links east of the Bay station, from which the average bearing of the north east shore of the Bay is about north west, and at one hundred chains the Ballona creek discharges itself into the Bay.

Thence south nine degrees forty five minutes west, seventeen chains to a stake on the east base of hills, six chains from the east shore to the lake. Station.

Thence south fifty three degrees west seventeen chains and thirty three links to a stake eight links east of the Bay shore at the north base of hills. Station.

Thence north eighty one degrees west six chains to a stake sixty links south of the Bay shore. Station.

Thence north fifty two degrees forty five minutes west fourteen chains and fifty links to a stake on the shore of the Bay. Station.

Thence south seventy three degrees west eight chains to a stake. Station.

Thence south twenty eight degrees forty five minutes west five chains to a stake fifty links from the shore of the Bay. Station.

Thence south sixty degrees forty five minutes west twenty one chains to a stake. Station.

Thence south eighty two degrees thirty minutes west seven chains to a stake on the north base of high hills. Station. from which a pass in the said hills bears north eighty eight degrees forty five minutes west.

Thence south fifty two degrees west fifteen chains to a stake at north base of high hills. Station.

Thence south eighty two degrees west ten chains to a stake at the edge of Bay. Station.

Thence south sixty degrees forty five minutes west eight chains to a stake at the north base of high hills and on the shore of Bay. Station.

Thence south fifty degrees forty five minutes west nine chains to a stake. Station.

Thence south forty three degrees fifteen minutes west at eleven chains and fifty links leaves the shore of the Bay and enters sand hills eight and ten chains wide extending far to the north west nineteen chains and fifty links to a stake station at the east shore of the inlet from which the east shore of the inlet ranges north, twenty degrees west. The inlet for about one hundred and thirty chains is from eight to ten chains wide.

Thence south forty five degrees nine minutes west, eight chains and twenty one links to a stake and charred stake station on the west shore of the inlet.

Thence north twenty five degrees thirty minutes west forty three chains to a stake at high water mark on shoal water bay of the Pacific Ocean. Station.

Thence north twenty five degrees forty five minutes west sixty five chains to a stake at high water mark. Station.

Then north thirty five degrees thirty minutes west one hundred and sixty chains to a stake at high water mark. Station.

Thence north thirty nine degrees thirty minutes west thirty chains to a stake. Station.

Thence north forty one degrees thirty minutes west thirty chains to a stake at high water mark. Station.

Thence north thirty seven degrees fifteen minutes west six chains to a stake at high water mark. Station.

Thence north sixty two degrees west one chain and fifty six links to a post opposite the mouth of the first barranca or gully being the north west corner of this rancho. Station.

Thence north forty nine degrees east two chains to base of southerly side of barranca with an average of one chain wide and the banks about thirty feet high coming from the north thirty eight chains to a stake in the pile of rocks on the high rolling table land extending south east for the distance of about one mile and terminating in low table land and bordering on the Ballona Bay which bay has its terminus at a distance of about one hundred chains south east from this point. Station.

Thence north fifty seven degrees one minute east one hundred and fifty two chains and ninety one links to four large rocks. Station.

Thence north fifty nine degrees east eighty chains and twenty four links to a point at intersection with the south boundary of section thirty four in Township One south

of range fifteen west, nineteen chains and ninety three links west of the quarter section corner eighty two chains and fifty links to a road, course west one hundred and twenty six chains and sixty four links to three large rocks each fifteen inches in diameter. Station.

Thence north fifty nine degrees and thirty minutes east fifty two chains to the rocks each eighteen inches in diameter. Station.

Thence north sixty three degrees east two hundred and forty one links to a stake being the most northerly corner of this ranch and station from which a willow tree twenty four inches in diameter bears south eighty degrees east distant three hundred and thirty two links (being a point agreed upon as the point where the alamo or cottonwood tree formerly stood).

Thence south fifty seven degrees thirty minutes east thirty nine chains opposite to and two chains east of a dry bed of a lake ten chains from east to west and three chains from north to south forty four chains and fifty links to a point cutting the south east corner of the lake at sixty two chains and fifty links crosses a road course east ninety chains to the center of a ravine thirty feet deep ninety six chains to a stake and charred stake at intersection with the south boundary of section thirty six in Township One south of range fifteen west, twelve chains and fifty eight links west of quarter section corner one hundred and thirteen chains and fifty six links to a stake and charred stake one hundred and fifty links north of a bunch of tunas. Station.

Thence south fifty four degrees forty five minutes, east forty five chains and seventy nine links to a stake and charred stake at intersection with the west boundary of Township Two, south of range fourteen west thirty six chains and seventy five links south of the north west corner of said Township, eighty six chains and fifty nine links to a rock two and one half feet long eighteen inches wide and twelve inches thick imbedded in the earth being an original corner station, and

Thence south fifty nine degrees thirty minutes east nine chains and fifty links to timber at eleven chains and fifty links, crosses a stream of water eighteen links wide skirted with sycamore trees course south west at eighteen chains and fifty links crosses a road course southwest to base of hills some three hundred feet high and leaves timber, thirty eight chains and eighty one links to the place of beginning containing thirteen thousand nine hundred and nineteen acres and ninety hundredths of an acre and being designated upon the plat of the public surveys as lot numbered thirty seven in Township One south of range fifteen west lot numbered thirty seven in Township Two south of range fifteen west of the San Bernardino meridian.

In witness whereof I have hereunto signed my name and caused the seal of the said office to be affixed at the city of San Francisco this Twenty third day of November A.D. 1873.

J.R. Hardenbergh
U.S. Surveyor General
for California

[MAP]

Now know ye that the United States of America in consideration of the premises and pursuant to the provisions of the Act of Congress aforesaid of 3rd March

1851 and the legislation supplemental thereto have given and granted and by these presents do give and grant unto the said Augustin Machado et al and to their heirs the tract of land embraced and described in the foregoing survey but with the stipulation that in virtue of the fifteenth section of the said Act neither the confirmation of this said claim nor this patent shall affect the interests of third persons.

To Have and to Hold the said tract with the appurtenances unto the said Augustin Machado et al and to their heirs and assigns forever with the stipulation aforesaid.

In testimony whereof I Ulysses S. Grant, President of the United States have caused these Letters to be made Patent and the seal of the General Land Office to be hereunto affixed:

Given under my hand at the City of Washington this eighth day of December in the year of our Lord One Thousand Eight Hundred and Seventy Three and of the Independence of the United States the ninety eighth.

By the President U. S. Grant
By S. D. Williamson, Secretary

L. K. Lippincott
Recorder of the General Land Office
Recorded Vol. pp. 484 to 493 inclusive.

A full true and correct copy of the original recorded at request of Francisco Machado January 26th 1874 at 50 min. past 10 a.m.

A. W. Potts, Recorder
By C. W. Gould, Deputy

Letter from J. R. Hardenbergh

U.S. Sur. Genls. Office
San Francisco Dec. 18th 1873

Hon. Willis Drummond
Comr Gen Land Office
Washington, D.C.

Sir:

In the matter of the survey of the Rancho of "La Ballona" finally confirmed to Augustin Machado et al. I beg leave to make the following report.

This Rancho was granted on the 27th day of November 1839 by Manuel Jimeno Acting Governor of California to Augustin and Ignacio Machado and Felipe and Tomas Tallamantes with the following description of boundaries: on the East by the Rancho of Policarpio Higuera; on the North by that of the citizen Alanis; on the West by that of Antonio Ignacio Abila and on the South by that of Jose Sepulveda: the extent being that shown by the Diseño. On the 31st of December 1839 Juridical possession was given of the Rancho (for description of boundaries fixed in giving possession see translation of Record thereof herewith transmitted).

The final decree of confirmation describes the land as follows: Beginning at a cotton wood tree at a considerable distance from the house of said Rancho which is marked with hatchet cuts; thence running East 7835 varas to a little pole bridge; thence South 9800 varas to the mouth of a creek (Estero) thence West along the sea coast 7300 to the dry gullies (Barrancas) Thence Northerly 7800 varas to the place of beginning, reference for a more particular description being had to the Grant map and juridical possession.

Under this decree the survey under consideration was executed in 1858 and sent to Washington before the passage of the Act of June 1860. This survey was rejected by the Hon Commissioner for the reasons set out in this letter to the Surveyor General of March 17th, 1860:

Subsequently by instructions from the Department the survey was advertised under the Act of July 1st, 1864, this letter of instructions dated November 30th, 1868, directing the Surveyor General to report his opinion on the survey having special reference to the point of objection presented in the communication from the Department of March 17th, 1860.

Referring to the points of objection set out in the letter of the Hon. Commissioner of Mareh 17, 1860 we are satisfied that he was misled from the true facts of the case by some of the features of the map of the survey before him — that portion of the map marked "Inner Bay" he evidently considered as a portion of the sea and not included in the Diseño, he therefore directed this portion to be executed. By referring to the original Diseño it will be seen that the word "Estero" is found written on the same near the sea shore: this I take to be the same place as that marked on the map of survey "Inner Bay," which is formed by the waters of the Ballona Creek and is increased or diminished in extent as the outlet of the same to the sea is more or less choked by the beach sands.

The Hon Commissioner directed certain other changes to be made which if now carried out would encroach upon patented ranchos which lie to the North East and South East of the Rancho.

There are no contests with this survey except as to one line that is the North Western boundary which divides it from the Rancho of San Vicente which is not yet in a condition to be sent up.

The survey of the San Vicente adopts the North Western boundary of the Ballona against which the owners of the said San Vicente protest claiming to go farther to the East thereby encroaching considerably on the survey of the Ballona Rancho.

Henry Hancock who made the survey swears that the line in question was pointed out to him by Jose Del Carman Sepulveda and Juan Maria Sepulveda two sons of Francisco Sepulveda Confirmee of the Rancho San

Vicente; that this line was agreed to by the owners of both Ranchos and this statement of Hancock is sustained by the affidavits of several aged witnesses.

In view of the order of the Hon Commissioner for an amendment of the survey unless good cause be shown to the contrary, I have not thought it necessary to discuss the voluminous testimony filed in the case as to the line dividing this Rancho from that of San Vicente. I have thought proper however to send up all the papers necessary for the issuance of the patent, so that in case the Hon Commissioner should think that the objections set forth in letter of the 17th of March 1860 are not tenable the survey may be in a condition to be patented.

All of which is respectfully submitted.

Very Respectfully
Your Obt Servt.

J. R. Hardenbergh
U.S. Sur Genl
for Cala

Letter from G. Howard Thompson

San Francisco, Cal
December 19, 1873

Hon J. R. Hardenburgh
U.S. Surveyor General,
San Francisco.

Sir,

I beg leave to inform you that I am the authorized Agent, and Attorney of the Claimants, to receive, and receipt for the patent to the Rancho "La Ballona" in Los Angeles County, Augustine Machado, et al, Confirmees, and I respectfully request that you will not deliver said patent to any other person. I was employed by the owners of said Rancho to attend to obtaining said patent, and at their request employed attorneys in Washington at great expense to attend to the case before the Interior departments there.

Very Respectfully
Your Obt Servt

G. Howard Thompson

Western Union Message Blank

No. 1.

THE WESTERN UNION TELEGRAPH COMPANY.

The rules of this Company require that all messages received for transmission, shall be written on the message blanks of the Company, under and subject to the conditions printed thereon, which conditions have been agreed to, by the sender of the following message.

JAS. GAMBLE, General Sup't, San Francisco. } 10-1 { WILLIAM ORTON, President, G. H. MUMFORD, Secretary, } New York.

Los Angeles Cal 20 1873

Received at San Francisco, Dec 20 18 1010 AM,

To G. Howard Thompson
534 Cala

We constitute G. Howard Thompson our Attorney to receive from the United States Surveyor General for California the patent for Rancho La Ballona in Los Angeles County and receipt for the same witness our hands this twentieth December eighteen hundred seventy three.

John D Young,
Ramo S Machado
Andres Machado,
Francisco Machado,
Dolores Machado,
Rafael Machado,
Rita de Aguilar,
Ygnacio Machado

54 Paid smo

Letter from G. Howard Thompson

San Francisco Cal
Dec. 22d 1873

Mess, Britton, & Gray,
Washington, City,

Gentlemen,

Your favor of the 12th inst. was received today. The patent to the Rancho "La Ballona" has also been received by the U.S. Surveyor General, but he refuses to deliver it on account of a protest having been filed against its delivery by Col. C. H. Larrabee who claims the right as attorney of the Claimants to receive it; although he can show no written authority to that effect, while I have filed with the Surveyor General a power of Attorney signed by all the present owners of the Rancho, empowering me to receive, and receipt for the patent, and besides I had quantities of evidence in the shape of correspondence with the owners, and their agent in Los Angeles showing me to be the proper party to deliver the patent to, but not withstanding all this, Hardenburgh refuses to deliver it to me, and has refered the matter to the commissioner. You will please attend to the same before him, and see that Hardenburgh is severely reprimanded by him, for such high handed conduct as wilfully and deliberately disobeying the orders of his superior officer. He is ordered to deliver the patent to the parties entitled to receive the same. I file a power of Attorney signed by all the owners empowering me to receive the patent and he refuses to deliver the patent to me, and refers the matter to the Department at Washington mearly upon the protest of a party who can show no authority atal in the matter.

Larrabee claims that the owners are owing him a contingent fee of $250 for services in the case before the Surveyor General, and before I took hold of it. If it is justly due him I would do nothing to prevent him from getting it, and know as soon as the claimants can be communicated with that they will pay him if they owe him

any thing. But let the Commissioner give old Hardenburgh one more slap in the face, before he goes out, which he clearly deserves. I am very sorry that this will delay me from sending your contingent fee in the case, as under my agreement with the owners I can not collect it until the delivery of the patent.

Hardenburgh promised to send a copy of the power of Attorney from the Claimants of the Rancho to me, to the Commissioner I wish that you would see that he has done so, in haste.

Yours very truly

G. Howard Thompson

Letter from Charles H. Larrabee

San Francisco.
Dec 22, 1973

Sir.

I have called upon you this day and asked you to deliver me the Patent in the Case of La-Ballona, as the attorney of the confirmees. I am met by a letter addressed you by Mr. G. Howard Thompson claiming to be the only authorized Agent of said Confirmees & their grantees. For the first time has it come to my knowledge that Mr. Thompson, or any one save myself, has been authorized to act as Attorney in this Case. I certainly have never been notified of such fact by any one.

By the records of your office you will see that I alone filed a brief in the case, and you will remember that I called upon you during the last spring, and upon my solicitation you took up the case, and upon examination decided it in favor of my clients the confirmees. I also advised with Mr Henry Beard of Washington, who had theretofore been acting as the Attorney of the Confirmees before the Dept. I have also shown you to-day my written contract with the Confirmees & their grantees, by which they contract to pay me $250, balance due for my services "when the patent for said Rancho shall be issued by the U. S. Government."

You will also bear witness that I have promptly and faithfully prosecuted this case in your office. This unexpected and unknown substitution of Mr Thompson, I can regard only as an attempt to postpone or deprive me of my just reward. I therefore respectfully request that the Patent be retained until opportunity be afforded to refer the case to the Hon the Commissioner of the Genl. Land Office.

I am Sir
Very Respectfully Yours

Chas. H. Larrabee
Atty for Confirmees

Hon. J. R. Hardenbergh
U. S. Surveyor Genl,
San Francisco.

Letter from J. R. Hardenbergh

U. S. SURVEYOR-GENERAL'S OFFICE,
San Francisco, Decr 22 1873.

Hon Willis Drummond
Comr Genl Land Office
Washington D.C.

Sir:

I have the honor to acknowledge the receipt of the patent of the Rancho "La Ballona." It appears that the claimants are represented by two different Attorneys, and each claims the patent.

I have declined to deliver the patent and forward the letters filed by the claimants Thompson and Larrabee for your decision.

Very Respectfully
Your Obt. Servt.

J. R. Hardenbergh
USSurv Genl Cala

Letter from Britton & Gray

H. T. Britton H. S. Gray

BRITTON & GRAY,
ATTORNEYS AT LAW,

Procure titles from the United States to agricultural, mineral and grant lands.

No. 509 Seventh St., May Building

Washington, D.C. Decr. 31st, 1873.

Hon. Willis Drummond
Commissioner of General Land Office

Sir: we herewith submit letter to us from Mr. G. Howard Thompson of San Francisco, Cal. stating the facts relative to refusal of Ex-Surveyor General Hardenburgh to deliver to Mr. Thompson the patent of the "Ballona" Rancho. Said refusal is so absolutely indefensible, that we have to ask you to forthwith instruct the Surveyor General of California to deliver the patent in accordance with the Power of Attorney filed with him. Clearly neither you nor he have authority to adjudicate the fees of Mr. Larrabee.

Very Respectfully
Yr. Obdt. Servts

Britton & Gray

Excerpts from Las Siete Partidas

TITLE XXVIII.

Concerning the Property Over Which a Man Can Exercise Ownership, and How He Can Obtain This.

A man obtains or loses the ownership of property not only by the decisions of judges, of which we have spoken in the preceding Title, but also in many other ways, which we shall show in the laws of this Title. For this reason we desire to explain here what such ownership is; how many kinds there are; and over what property a man can obtain it, and over what he cannot.

• • •

LAW III.

What Those Things Are Which Belong in Common to All Creatures.

The things which belong in common to the creatures of this world are the following, namely; the air, the rain-water, and the sea and its shores, for every living creature can use each of these things, according as it has need of them. For this reason every man can use the sea and its shore for fishing or for navigation, and for doing everything there which he thinks may be to his advantage. If, however, a house, or any other edifice whatsoever, is found upon the sea shore, it should not be torn down or used in any way without the permission of the party who built it, or to whom it belongs; although if the sea or any person should demolish it, or it should fall down, anyone whosoever can erect a new edifice in that same place.

• • •

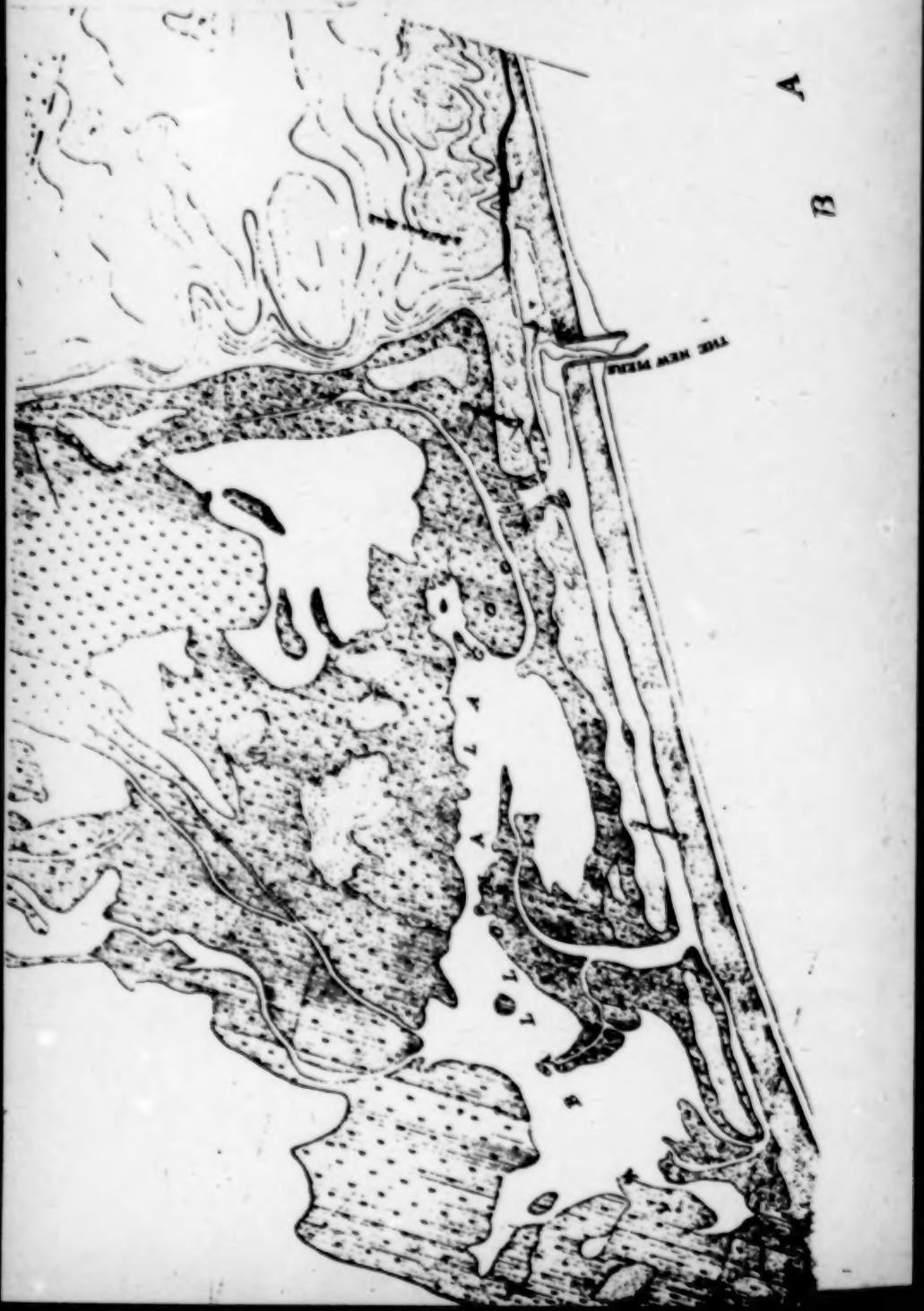
LAW VI.

Every Man Has a Right to Make Use of Harbors, Rivers, and Highways.

Rivers, harbors, and public highways belong to all persons in common, so that parties from foreign countries can make use of them, just as those who live or dwell in the country where they are situated. And although the banks of rivers are, so far as their ownership is concerned, the property of those whose lands include them, nevertheless, every man has a right to use them, by mooring his vessels to the trees, by repairing his ships and his sails upon them, and by landing his merchandise there; and fishermen have the right to deposit their fish and sell them, and dry their nets there, and to use said banks for every other purpose like these which appertain to the calling and the trade by which they live.

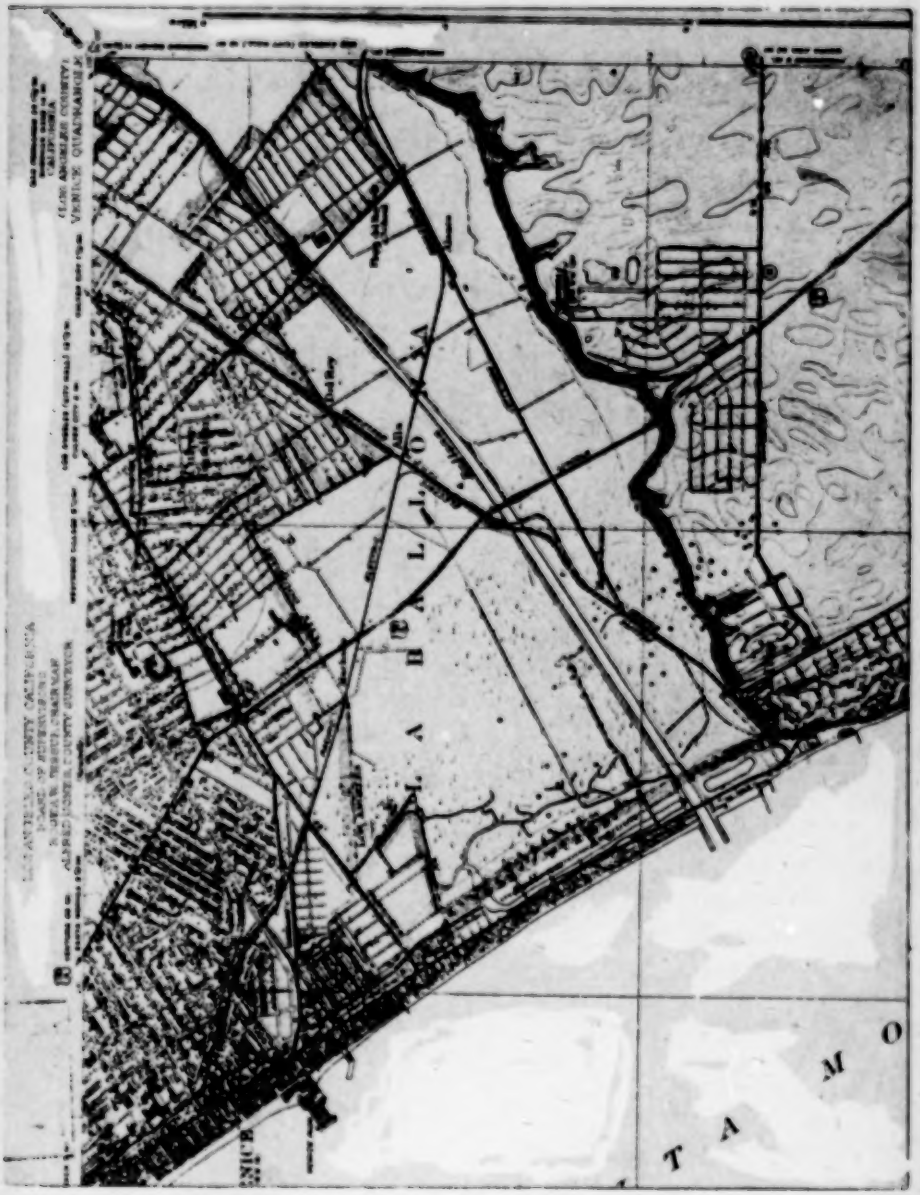
United States Coast Survey Topography from West Beach to Vicinity of Santa Monica, California, 1876

United States Coast and Geodetic Survey, Topographical Sketch of the Proposed Harbor of Port Ballona, Los Angeles, California, 1887



United States Geological Survey, Department of the Interior, Redondo Sheet, Los Angeles County, edition of 1896

United States Geological Survey, Department of the Interior, Venice Quadrangle, Los Angeles, edition of 1934.



Trial Testimony of Antony Ronald Orme

[*197] *ANTONY RONALD ORME,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

THE CLERK: Please be seated and spell your name for the record.

THE WITNESS: Antony Ronald Orme, A-n-t-o-n-y, R-o-n-a-l-d, O-r-m-e.

DIRECT EXAMINATION

BY MR. PARRILLE:

Q Dr. Orme, what is your present occupation?

A Professor of Geography and Chairman of the Department of Geography at UCLA.

Q Are you presently instructing students at UCLA?

A I am.

Q Can you describe your educational background.

[*198] *MR. BITTING: Your Honor, I have an objection on the grounds that we do have a pending motion. I assume from the nature of this man's expertise that this is being offered, at least in part, on the first cause of action of the City's complaint.

I note my objection for the record.

May the testimony be received, since it is a pending motion, subject to a motion to strike at the end of the testimony insofar as it may pertain to the first cause of action.

THE COURT: Yes.

MR. BITTING: Thank you, your Honor.

THE COURT: You were asked, Dr. Orme, to describe your educational background, I believe.

THE WITNESS: Yes. I was educated in England, and I entered in 1954 the University of Birmingham in Eng-

land where I acquired, in 1957, the degree of bachelor of art with first class honors.

I continued in that university and, in 1961, I was awarded the degree of doctor of philosophy in the department of geography at that university for a thesis that concerned the geomorphology of a portion of Southwest England.

THE COURT: I am sorry, I didn't get the word immediately preceding the "of".

THE WITNESS: Geomorphology, g-e-o-m-o-r-p-h-o-l-o-g-y. The study of land forms.

[*199] *Q BY MR. PARRILLE: Can you briefly, Dr. Orme, tell us where you have instructed and what types of courses have you taught.

A From 1960 to 1968 I was an instructor at the National University of Ireland in Dublin, Ireland and I instructed in courses that concerned physical geography, environmental systems and economic geography and related matters, field courses, in particular.

From 1968 until the present, continuing, I have been an instructor at the University of California, Los Angeles. My prime responsibilities there have been to instruct in the areas of, first, geomorphology; secondarily, environmental systems; third, field courses; and, fourthly, in studies of the quaternary.

Q Could you explain to the court what the meaning of quaternary is.

A It is the last episode of geological time in which we still exist. It has been variously dated between approximately one million and three million years of age. The quaternary is a period of the Cenozoic era.

Q Have you initiated any courses at UCLA?

A I have. I initiated a course in environmental systems, in quaternary studies and I have assisted in the initiation of a field course termed ecosystem analysis and conservation.

Q What would be the scope of that course?

A The latter field course, this would be concerned primarily with teaching advanced undergraduate stu-
[*200] dents in the *field, matters pertaining to the nature of environmental systems, systems in which human beings occupy. We refer to these, therefore, as ecosystems in their manifold aspects and these would include elements of earth, water, soil, plants and animals.

THE COURT: Is eco an acronym?

THE WITNESS: It is the same as in economics insofar as it refers, really, to the home, and, therefore, if we are dealing with ecosystems we are really dealing — and in ecology, for instance — we are dealing with the study of home of man. The term "ecosystems" was first introduced in 1935 by the British ecologist, Sir Arthur Tansley.

Q BY MR. PARRILLE: Dr. Orme, do you have any former students who have attained or are working for advanced degrees under your guidance?

A Yes. Since joining UCLA seven students have acquired Ph.D.'s under my guidance and approximately five further students have attained M.A. degrees and some of these are now continuing for the Ph.D. degree.

Of those who have attained Ph.D.'s, in 1971, two candidates acquired Ph.D.'s under my guidance. One of these is now the chief geographer with the U.S. Forest Service in Ogden, Utah.

A second one is an electrogeographer in Ghana.

In 1974, five Ph.D.'s were acquired under my tutelage. These gentlemen are now in universities in various parts of the world. One is in Jordan, one in North Carolina Central University, one in California State University at
[*201] *Northridge and one at the University of Oregon and there is one other somewhere.

Q What is the significance of having students who have attained graduate degrees and have gone on to other levels of instruction?

THE COURT: Significance to whom; what do you mean by "significance"?

Q BY MR. PARRILLE: To the educational or to the academic world.

A We would always hope that those of us who are in the instructional business would instruct students who could advance knowledge further than we can ourselves, otherwise, we are getting nowhere, and this is our ideal. It sometimes falls short of that but the aim is, indeed, to teach students all that you know and then to hope that they will advance the field of knowledge by their studies somewhat further and go into universities and into industry or business themselves and will disseminate the word, as we see it, further afield.

[*202] *Q Thank you.

Have you been employed to do any research projects in your field of expertise?

A Yes, in two capacities. In one capacity as a principal investigator, and in a second capacity as a consultant. I will address both of these independently.

As a principal investigator, I have been retained by the United States Navy, Office of Naval Research, for work that has concerned coastal geomorphology and coastal vegetation studies with a particular view to the use of sensing data in the interpretation of these studies. By sensing data, I mean the use of aerial photography and also imagery that is in the nonvisual wavelengths. I should point out, perhaps, that whereas a few years ago we confined ourselves to photography, aerial photography, that is what we could ourselves see visually, that in the modern sensing we are particularly concerned with using imagery and wavelengths that are beyond the visual. That is, we are particularly concerned with imaging heat and energy in the environment through the use, for example, of infrared imagery which will sense heat and radar, and so on.

In my capacity as principal investigator for the Office of Naval Research, I have used both visual aerial photog-

raphy and also particularly color infrared imagery. This work has been partially concerned with an evaluation of coastal environments along the coast of Southern California and Baja California, and culminated in at least three major reports between the period 1971 and 1973.

[*203] *And then more recently, work that was initiated, indeed, in 1971, and is ongoing at the present time on interpretation and evaluation of coastal environments along the coast of Southern Africa, specifically the coast of Natal, Zulu land, and neighboring areas, Transkei, and Mozambique.

This work was concerned, among other things, with the evaluation, analysis and interpretation of coastal barriers and lagoon systems.

More recently, I have also served as principal investigator for the Coastal Engineering Research Center, which is the coastal research arm of the United States Army Corps of Engineers headquartered in Washington. In this capacity, I have evaluated for them the effects of specific groin configurations on beach geometry and textural characteristics using the experimental groin that was constructed for this purpose on the Point Mugu Naval Station in Ventura, in Southern California, and this involved, amongst other things, collection of data on a daily basis over 128 consecutive days at 25-minute intervals on both sides of an experimental groin from highwater mark to minus 30-foot sea level elevation over 128 days and the subsequent analysis and interpretation of these data.

As a consultant, I have been retained, amongst other organizations, by the Tahoe Regional Planning Agency, and in 1971, first of all, I was retained to do a preliminary analysis of the shores system for Lake Tahoe, California, Nevada.

[*204] *And in 1972, I was further retained to prepare the groundwork for a shore zone plan of Lake Tahoe. This report was submitted in the summer of 1972, passed through a series of public hearings, was subsequently augmented by shoreline ordinance in which I collaborated

with my colleague in the University of Berkeley, Professor Michael Hayman, and this resulting shore zone plan for Lake Tahoe was recently awarded the 1974 Conservation Award by the American Institute of Planners.

I have also served as a consultant to the logging industry in California on matters pertaining to environmental degradation of landscapes as a result of timber harvesting.

I have also served as consultant on a brief basis to a few other organizations.

Q Thank you.

Are you a member of any honorary or professional societies?

A I am a member of the Geological Society of America; the Association of American Geographers; Association of Pacific Coast Geographers; the Institute of British Geographers; and I am a Fellow of the Geological Society of London; as well as other minor organizations.

Q Have you held any offices in any of these organizations?

A I was president of the Association of Geography Teachers of Ireland for four years, and I have served in a committee capacity in some of the other organi-
[*205] zations, including *presently on the Committee of the Marine Studies Group of the Association of American Geographers.

Q Have you had an opportunity to present any professional papers in your field?

A Yes, over the years since I initiated my university career in 1960, I have probably presented 60 to 80 professional papers at conferences and meetings, symposia, in various parts of the world; but primarily in North America, Europe, including the British Isles and Africa.

Q Have you had any books published?

A Yes, I have co-authored two or three books. I have written — I have been solo on one book that was termed

"Ireland" and that was published in 1970 in this country by Alden Ericson in Chicago.

In Britain and in the Commonwealth, by Longman's.

I have also participated or have been one of the contributors to several volumes, including presently a volume that has just been published this month, I believe, on "Coastal Resources Inventory in Prospect", in which I have dealt with the theme of ecologic stress in a subtropical coastal lagoon, particular lagoon being in Southern Africa.

Q Do you have any other books scheduled for publication?

A I am presently writing a book on man as a geologic agent. The role that man has played, in other words, in shaping the earth's surface and, more specifically, in affecting the magnitude and intensity of surface processes
[*206] *such as wave and current action, river action, wind, and so forth.

Q Have you had any research articles published in any scientific journals or books?

A Several articles have been published in scientific articles in books. In all, I suppose approximately 60 items have been published over the years. I would consider about 30 of these to be major items.

In other words, papers of approximately ten pages or more in length as chapters in books or as major articles in scientific journals.

I have had a number of — the remainder are minor items, primarily reviews, abstracts, shorts, summaries of conference papers, and so on.

[*207] *Q In what magazines or reports have these articles been published?

A The Bulletin of the Geological Society of America; The Yearbook of the Association of Pacific Coast Geographers; The Transsection of the Institute of British Geographers; Quarterly Journal of the Geological Society of London; Transaction of the Geological Society of

South Africa; Irish Geography; Geographical Viewpoint, and others.

Q Have you undertaken any reports for agencies of the United States Government?

A Yes, I have. In my capacity as a principal investigator, I have submitted reports to the Office of Naval Research of the United States Navy, and to the Coastal Engineering and Research Center of the United States Army Corps of Engineers.

Q Have we covered all of your published material?

A I think we have a reasonable sample of what I have done.

Q Are you involved in any editorial aspects of publications?

A I serve quite frequently as a reviewer and sometimes as an editor of specific papers, most recently for the Annals of the Association of American Geographers, and the Journal of Sedimentary Petrology.

I have in the past served as an editor on Journal for Geographical Viewpoint from 1965 to 1972.

Q I don't believe you mentioned that you served in any other capacity at the University, or any other
[*208] *activities in addition to your instruction in geography. If so, would you please describe those.

A I am chairman of the Department of Geography at the University of California at Los Angeles.

I am also chairman of the Marine Studies Council at the University of California, Los Angeles; and I have served on a variety of academic senate committees, including being chairman last year of the Undergraduate Student Support Committee.

MR. PARRILLE: If that qualifies Dr. Orme, your Honor, may I continue?

MR. BITTING: Excuse me, qualifies him for what, your Honor?

MR. PARRILLE: As an expert in the field of geography and, I believe, he has defined geomorphology, but I, of course, will ask him to define that more precisely for the court.

[*209] *THE COURT: You may proceed.

MR. PARRILLE: Thank you.

Q Dr. Orme, can you, more precisely, define for the court the term "geomorphology"?

A Geomorphology has its origin in three Greek words: geo, earth; morphus, shape; and logos, study, and it is a word that, in other words, means the study of land shapes. We prefer to use the term "land forms", and, indeed, the study does not stop at that point because to study land forms it is necessary to also study the things that affect shape and mold of land forms. For example, a beach is a land form but one cannot study the beach in isolation from the waves, currents, winds and tides that affect that beach, so the study of land forms or geomorphology implicitly also covers the study of the processes.

THE COURT: Is there a study referred to as the study of earth plates and their movements?

THE WITNESS: There is instructional geology. There is a subcomponent called plate tectonics that has been concerned with the mega structures, the large scale structures of which this earth is composed, specifically, the continental and oceanic plates and their relationship to one another.

We generally refer to that as plate tectonics and it really falls within the general framework of structural geology.

As a geomorphologist I have been involved in this study, specifically, in trying to define, more readily, the deformation that Baja California has experienced as a
[*210] result of *plate tectonics.

Q BY MR. PARRILLE: Were you employed by the City of Los Angeles to make a determination as to the

origin, nature and geomorphology of the area known as Ballona Lagoon?

A I was.

Q Now, to assist the court in formulating your opinion, did you collect a glossary of terms pertinent to your determination and investigation?

A I did.

Q Now, I will ask you a series of terms that you have given to me and I would ask that you define them for the court.

Would you define the term "barrier beach."

MR. BITTING: Is this his definition that is being asked — May I inquire of counsel through the court — his definition or a generally accepted definition or Webster's definition?

THE COURT: I assume that the witness will be asked questions, which questions will incorporate, among other words, barrier beach, and that the inquiry is being made as to the sense in which the witness will be using those terms; am I correct?

MR. PARRILLE: Yes, sir. I can inquire of the witness as to the source of the definition of these terms.

Q Doctor, what is the source —

THE COURT: Well, there is a pending question.

MR. PARRILLE: I will withdraw the pending question.

Q Dr. Orme, what is the source of the terms and the definitions of the terms that you are going to be using?

A It is the glossary of geology which was published
[*211] *by the American Geological Institute and, if I may, I have some notes that will allow me to speak directly to these questions because I compiled up a glossary specifically for this purpose from that source rather than rely on my own interpretation.

Q If you would, sir.

A The complete reference is —

Q I believe I have to ask you this: What is the definition of barrier beach?

A A single, narrow elongate sand ridge rising slightly above the high tide level and extending generally parallel with the shore but separated from it by a lagoon or marsh. It is extended by long shore drifting and is rarely more than several kilometers long.

Q Can you define for us the term barrier island.

A A long, low, narrow, wave built, sandy island representing a broadened barrier beach that is sufficiently above high tide and parallel to the shore and commonly has dunes, vegetated zones and swampy terrains extending lagoonward from the beach.

[*212] *Q Can you give us an illustration of the barrier type island?

A There are several barrier islands along the east coast of the United States and along the gulf coast of the United States, specifically, along the coast of Texas, where these islands lie some distance from the shore. They are islands. They are surrounded by water but run parallel with the shore and, amongst other places, for example, Miami Beach in Florida, lies a barrier island and the Lido in Venice, in Europe, likewise.

Q Can you define for us the term "barrier lagoon"?

A A lagoon that is roughly parallel to the coast and is separated from the ocean by a strip of land or by a barrier reef although this would not be pertinent to the present matters under consideration.

Q Can you define "barrier spit"?

A This is a barrier island or barrier beach that is connected at one end to the mainland.

Q Can you define "creek" and "creek coast"?

A Creek is variously used. In the eastern United States it is used in its derivation from the English term for a small inlet or narrow bay, arm of a sea, generally longer than it is wide and much narrower, extending further into the land than, for instance, a cove.

In Maryland and Virginia the name "creek" was given during the earliest period of English colonization for narrow recesses along the coast.

In other parts of the United States, the term "creek" [*213] *has frequently been given to small, narrow inlets or estuaries of small rivers and sometimes to the rivers themselves, but where given to estuaries or small rivers such usage can be found, for instance, in California, for example, in Napa Creek and Redwood Creek, et cetera.

A creek coast would be a coast that was characterized by such creeks reaching the shore.

Q Can you define the term "lagoon"?

A Lagoon is a shallow stretch of sea water such as a sound or channel, a bay or a lake near or communicating with the sea and partly or completely separated from it by a narrow, low elongated strip of land, generally in the form of a barrier island or barrier beach, so that the shallow stretch of water, itself, is only partially connected with the main body of ocean water.

It has been used in other respects, in other ways, as a shallow, fresh water pond or lake, communicating with a larger lake or river, sometimes used as the shallow body of water enclosed or nearly enclosed within an atoll and the term has, in fact, been widely applied to a variety of coastal features, including estuaries, slews, bayous, marshes and lakes into which the sea flows.

Its etymology is in the Latin word, lacuna, a pit or a pool.

Q Are there any lagoons in California that are prominently known or would be illustrations of this term "lagoon"?

A There are a series of lagoons, specifically, along
[*214] *the coast of San Diego County, that are cut off from the sea, to a greater or lesser extent, by barrier beaches.

Originally, during approximately 100 years ago, there would have been a series of lagoons along the coast of Southern California of Los Angeles County, specifically, for example, behind Long Beach.

Long Beach is, itself, a name after the long barrier beach which would have fronted the lagoon or the mouth of the San Gabriel or Los Angeles rivers at that time.

Newport Beach also fronts a lagoon. Newport Bay.

And as one goes further north in California the area presently under consideration in this particular case — Ballona Lagoon — would have been a similar lagoon of that nature.

[*215] *Q Can you define the term estero? What would be the origin for this definition?

A Estero, an estuary or inlet, especially a marshy estuary, and the term is also used for the land adjoining estuaries inundated by the tide.

The word itself is of Spanish origin, estero, and the Spanish, as with the English estuary, which seem to be comparable, have the origins in the latin word aestus, meaning tide.

Q Can you define the term estuary, then?

A Estuary, the seaward end or widened funnel-shaped tidal mouth of the river valley where fresh water mixes with and measurably dilutes sea water and where tidal effects are evident. For example, in a tidal river.

It may also be a partially enclosed coastal body of water where the tide from the sea meets the currents of a stream from the land.

Q Would there be any illustrations of estuaries in other parts of the world that we might be more familiar with? Give us an example.

A Well, the Columbia River estuary is a major estuary in the Pacific Northwest, for example. Major estuaries, the Amazon, for instance, is a large estuary, a thousand miles wide.

Most major rivers, in fact, in the world, of course, do flow to the sea through estuaries. Sometimes, they are blocked or partially blocked with islands. Sometimes the estuaries are, in fact, very complex and one has deltas
[*216] *forming estuaries as in the case of the Mississippi, due to excessive sedimentary loads, but most rivers do reach the seas through estuaries.

Q In conjunction with the term estuary, can you define the term estuarine?

A It is an adjective that pertains to an estuary. It is often used for deposits accumulated in an estuary environment, and these deposits may be of both mineral and biological origin. In other words, one might have sand, silt or clay, inorganic origin, together with decaying organic debris derived from marshy vegetation growing within such an estuary.

Q Would that also refer to the term estuarine deposit?

A That is also true. Estuarine deposit tends to be characterized primarily by fine-grained sediments, chiefly clay and silt, that would generally be a mixture of both fluvial materials carried down by stream and marine materials carried in by the tide mixed in with a variable proportion of decomposed organic matter.

Q Can you define estuarine lagoon?

A This is a lagoon produced by the temporary sealing of a river estuary by a storm barrier. Such lagoons are usually seasonal and exist until the river breaches the barrier. They occur particularly in regions of low or spasmodic rainfall, such as we have in Southern California.

Q Would you define estuarine salinity.

A Salinity of an estuary varies according to tidal
[*217] *or seasonal conditions. At times, when the lagoon or

estuary is in contact with the open ocean, the salinity may be quite high and may approach 35 parts per thousand.

During periods when the lagoon or estuary may be cut off from the sea by the growth of a barrier beach salinities will be reduced conceivably by the continuing inflow of water from the land, the salinity of stream water, of course, being less than one part per thousand.

At the same time, if that water then is allowed to evaporate in such a lagoon, salinity may, in fact, increase as a result of the evaporation of the water content and the concentration of chlorine and other salts, and this will promote salinity and rise to over sea water values, giving rise to salt flats, saline deposits, and giving rise also to highly saline vegetation, salt marsh plants, and so forth. And it is possible in such environments to have excessively high salinity developing during summer months when water in such lagoons may also entirely evaporate leaving salt encrusted pans.

This may occur along the coast and also inland, and I know of estuaries certainly in Baja, California, or lagoons, rather, in Baja, California and Africa, where salinity is in excess of 100 parts per thousand or ten percent have been achieved as a result of evaporation, so the salinity of an estuary environment is a highly variable thing.

Q Can you define a salt marsh?

[*218] A Salt marsh is an area of vegetation that occupies *flat or poorly drained land subject to periodic or occasional overflow by salt water, water that is brackish, too strongly saline, and promotes a thick mat of grassy halophytic plants. These are plants that are adapted to saline conditions.

Typical salt marsh would be, for example, a coastal marsh that was periodically flooded by the sea, or an inland marsh or salina in an arid region subject to intermittent overflow of water containing a high content of salt.

The term is often used synonymously with tidal marsh or marine marsh along the coast.

Q Can you define the term tidal creek?

A This would be a relatively small inlet or estuary that is subject to tidal flows.

Q I believe you just mentioned the term tidal marsh. Could you define that for us?

A This is a low, flat marsh bordering a coast as in a shallow lagoon or sheltered bay, formed of mud and of a resistant mat of roots of salt-tolerant plants, and regularly inundated during high tides. In other words, a rather marshy tidal flat.

[*219] *Q Finally, sir, can you define for us the term transgression?

A Transgression is a term that means the spread or extension of the sea over the land and the consequent evidence of such advance, such as marine strata deposited on older deposits. Also, it implies any change such as a rise of sea level or subsistence of land that brings offshore, typically marine environments to areas formerly occupied by nearshore, typically shallow-waters conditions, or that shifts the boundary between marine and nonmarine deposition or between deposition and erosion outward from the center of a marine basin.

Q Would there be any other term that you would use in conjunction with the term transgression?

A We might use the term invasion — marine invasion — and we would sometimes be required to use the common word of transgression, which would be regression, withdrawal of the sea.

The source of my comments, I should like to specify exactly, I have been speaking from terms defined in the "Glossary of Geology" edited by Gary M. McAfee, R. Wolf, which was a publication put out in 1972 by the American Geological Institute, Washington, D.C. The American Geological Institute is, in turn, a blanket

organization for all geological organizations in the United States, and I would consider it a definitive work which all geologists or geomorphologists, I think, would necessarily have to have as part of their library source.

[*220] *Q Did you utilize any other references in preparing the glossary of terms?

A As a person who is working in this field, myself, in the field of barrier beaches, lagoon systems, I have had a great deal of exposure to field situations where these have occurred and I necessarily did refer back to some of my previous papers in this area.

I also produced a series of cross sections of a coastal area that defines these terms specifically with respect to individual profiles. These are materials that I gave to my classes, and I think you have a copy of these.

I have also referred to a variety of works that have concerned the flandrian marine transgression, and I have summarized some of the findings of these works over the past decade in a series of sea level curves that I put together on another chart that I believe you have available.

In addition, with respect to the specific area of Ballona Lagoon and Ballona Creek, I have referred to a paper published by the United States Geological Survey, specifically this is a paper authored by J. F. Poland, A. A. Garrett and A. Sinneott. The geology, hydrology, and chemical characteristic of ground water in the Torrance, Santa Monica area, California. United States Geological Survey, water supply paper, 1461, 1959.

Q Very good, Doctor. I don't think you have defined the term barrier lagoon system.

Can you explain to this court what that would be and how a barrier lagoon system would be formed?

[*221] *A A barrier lagoon system is an environmental complex that comprises a barrier beach or spit or island lying seawards of a body of water, a lagoon or estuary

that is periodically, at least, in connection or contact with the ocean.

A barrier lagoon system is affected both by processes shaping the barrier beach, that is, primarily wind, wave, and current activity along the coast, and by processes affecting streams flowing into the lagoon behind the beach. That is, primarily, surface run-offs and erosion of watersheds behind the coast.

I would consider that Ballona Lagoon and the beach in front of Ballona Lagoon is an example of a barrier lagoon system, albeit substantially modified by human activity.

MR. BITTING: Your Honor, I move to strike everything after "I have considered Ballona Lagoon" on the ground there is no foundation for that testimony, it is not responsive to the pending question or questions which were compounded.

THE COURT: Be stricken on those grounds.

Q BY MR. PARRILLE: Dr. Orme, can you tell us the three ways in which a barrier lagoon system is formed?

A A barrier lagoon system commonly comes into existence following a rise of sea level and the flooding of a portion of a coastal environment. It may come into existence, for example, by the building of beach materials across an estuary, by longshore drift — that is, by more or less horizontal or lateral movement of materials
[*222] across an *estuary. It may come into existence, secondly, as a result of the upward accretion of a submarine bar across such an estuary.

[*223] *It may come into existence, thirdly, during a marine transgression as a result of the upward rolling of a beach into a new position across a valley mouth.

• • •

[*236] *MR. PARRILLE: Your Honor, the clerk has marked a copy of a map as plaintiff's 13. It is a certified copy of

a map entitled "United States Coast Survey Topography From West Beach to Vicinity of Santa Monica, California, 1876."

Q Dr. Orme, can you tell us what that map depicts?

A It shows a portion of Santa Monica Bay extending from approximately the present vicinity of Venice to beyond Playa Del Rey.

It shows in the left center of the map, somewhat south of the middle, somewhat below the middle, it shows an area of symbolism —

Q May I ask that we place the map on the board, and perhaps you can point it out with a pointer.

A Shows an area of Santa Monica Bay along the shore here. North is in approximately that direction, and we are looking west down here towards the open ocean. Along the coast there is an area of symbolism of primarily two types.

One being a stipple that extends from approximately midtown Venice across what appears to be the mouth of Ballona Creek and then continues into the El Segundo sandhills. This symbolism, stippled symbolism, is although not designated in any key, it is thought to refer, as it commonly does on such maps, to the presence of
[*237] sand dunes *along the coast.

Behind the coast, there is an approximately triangular area constituting what I consider to be much of the larger area of Ballona Lagoon, areas of water within this general region, a stippled area for which I have no immediate explanation, which I rather imagine may be mud flat, and then an area shown again with a different type of symbolism, but of a symbolism that is rather typical of the type which would be used to depict salt marsh vegetation within the tidal creek estuary or lagoon or environments.

[*238] *Ballona Creek is shown entering this area and flowing through a series of rather complex channels, through a series of rather larger lagoons and then breaking out into quite a large area and eventually into a continuation of the creek and the lagoon, parallel with the shore, and then exiting through the barrier beach at this point here, more or less under the hills of Playa Del Rey.

The map also shows the barrier beach extending along the seaward edge of the lagoon for several miles to this point.

Q What would be "this point", sir?

A Approximately the present location of Playa Del Rey, extreme southwest corner of the Ballona embayment.

THE COURT: Would you spell the last word, please.

THE WITNESS: E-m-b-a-y-m-e-n-t.

Q BY MR. PARRILLE: Of what assistance is this map to you in helping you to formulate your opinion?

A Maps of this character, including this specific map, are extremely useful in defining the natural environment, the physical environment, prior to the significant human interference with a region.

At the present time, as we well know, the area of Ballona Lagoon has been much adulterated by human activity and in 1876 when this map was drawn, such was not the case, therefore, this map would help to establish the characteristics of the lagoon prior to significant human disruption.

Q Fine.

We offer into evidence plaintiff's No. 13.

[*239] *MR. BITTING: I object on the ground of relevance. The only relevant time is in 1839 when Governor Alvarado granted the land to the Machados and Tala-

manteses, and what was the character of the water on the property at that time.

Q BY MR. PARRILLE: Dr. Orme, to the best of your knowledge —

THE COURT: Are you withdrawing the pending question?

MR. PARRILLE: I would ask a question for foundational purposes.

THE COURT: You may withdraw the pending question.

MR. PARRILLE: I will withdraw the pending question.

Q Dr. Orme, as an expert in the field of geography and cartography would this map represent the general nature of Ballona Lagoon approximately 30 to 40 years previous to the time it was drawn?

A This would be highly indicative of a situation 30 to 40 years prior to that stage, yes.

MR. PARRILLE: I ask that the court accept into evidence plaintiff's No. 13.

MR. BITTING: To which I object on the same ground, your Honor. The only relevant time is 1839 at the time of the grant from Alvarado to the Machados and Talamanteses.

THE COURT: It goes to the weight of the evidence.

The objection is overruled.

It will be received in evidence as plaintiff's 13.

[*240] *MR. PARRILLE: Thank you, your Honor.

Q I have in my hand a certified copy of a United States coast and geodetic survey map, topographical sketch of the proposed harbor port of Ballona, dated December, 1887, marked as plaintiff's No. 14.

Sir, can I ask you to describe what the map denominated plaintiff's 14 would be?

A This shows an area named "Port Ballona" which represents an enlargement, a representation of a portion of the area shown on the previous map at a later date, 11 years later, and is to a somewhat larger scale, also oriented with true north at the top of the map and showing a major portion of the triangular area shown on the previous map as representing Ballona Lagoon.

It shows, again, with characteristic symbolisms a barrier beach or spit extending along here to what are termed the "New Piers" and then continuing across and going south into the Playa Del Rey area.

It also shows sand on the far side of a linear strip of water running parallel with the shore, again, lying on the far side and running parallel with the shore.

Landward of this shows an area designated Ballona Lagoon.

The lettering extending across here are areas of open water and also the term lagoon across areas of salt marsh.

There are also areas along the south side of the lagoon area, at least a symbolism seems to represent sand, areas of open water, again, landward of the main
[*241] shore. Several *areas of open water.

There are also areas shown with subaquatics countouring which are probably rather small ponds and there are a series of channels connecting these.

I imagine that Ballona Creek enters this area — off the map — but, in any case, there are a series of channels running through this region connecting various bodies of water, running into Ballona Lagoon here, and then exiting out of Ballona Lagoon into two positions: One, here, and curving around to the north and then south and then running out also here and running out again to the south along a portion of the lagoon that lies immediately behind the barrier beach.

The New Piers presumably refer to the creation or construction of piers to maintain a harbor entrance or

an inlet through the barrier beach at this point and this, presumably, refers to Port Ballona.

There is some writing in here that does refer to some of the characteristics of a borehole that was put down near the south pier at this point and this borehole penetrated through an area of beach sand into an area of marsh muds, as I interpret it.

Q Does the written description make any reference to any barges or boats located on the lagoon?

[*242] *A I would have to read it. Perhaps I should read the whole of this. Would that be appropriate?

MR. PARRILLE: May the witness read the written legend, your Honor?

THE COURT: Any objections?

MR. BITTING: No objection, your Honor.

THE WITNESS: (Reading):

"Note: The triangulation was executed for the purpose of determining the position of the new piers, and is so extensive because the stations nearest to Ballona Lagoon had been destroyed. All the topography, except the new piers and some slight changes about the entrance to the lagoon, has been approximately enlarged from a tracing on a scale of 1/20,000 of Asst. Chase's work in this locality in 1875.

"It exhibits the entire tidal area of the Lagoon, which the projectors of this new harbor deemed sufficient to maintain a deep water channel between the jetties, with the assistance of dredging to deepen the water in the lagoon.

"On August 29th, when I first visited the place, the dredger had been at work about two weeks in the place marked A. . . " (Witness indicating.) Which is there.

[*243] *". . . and had deposited the material pumped up outside to the southward of the southern jetty at first, but afterwards in the area marked B."

(Witness indicating) Which is there. "It had not yet succeeded in excavating a space sufficiently large to allow it to float and swing at low tide.

"At the date of my last visit, September 19th, the dredger was still at work in the same place, and had made no apparent progress. The channel between the jetties, instead of scouring as it was expected to do, had filled up so as to leave but a narrow channel at low water.

"The low water line exhibited on this sheet was sketched in approximately at low tide from a position on the bluff overlooking the entrance. The piers are of wood, piled like ordinary wharves, but are sheathed on the channel side by square timbers driven into the sand close together and bolted to the piers and to each other.

"To ascertain the character of the formation, a well had been bored at the inner end of the southern jetty. The following is reported to me as the result: From mean high water eight feet of coarse sand; next 14 feet
[*244] of hard, blue *clay in thin horizontal layers; next 26 feet of fine sand; next 32 feet gray mud, soft and mixed with sand; next four feet of blue clay; below this there is gravel and fresh water, and they went no further.

"A well now being sunk near the southern end of the lagoon at the edge of the bluff shows a much different formation. It is a fact that the dredger is boring in clay, which seriously retards the work as the cutter becomes clogged with it."

I think that is pertinent to what you just asked me.

MR. PARRILLE: Thank you, Doctor.

MR. BITTING: Excuse me, may I inquire of the witness one question?

Did you read the last paragraph?

THE WITNESS: I did not.

Q BY MR. PARRILLE: Of what significance would be the results of the bore hole test?

A They show what, in my experience, is characteristically the type of deposits that one finds in barrier lagoon situations close to the shore. When one initially bores down what they are reaching, they are boring down initially through the barrier beach and then penetrating into the muds of the lagoon over which the
[*245] barrier beach has *been built.

They are then extending down through some initial muds into the barrier beach that may have been built up during the marine transgression that brought this into existence, and then they are going down below that again into previous muds of a previous lagoon several score feet below present sea level.

In other words, along the immediate coast in the vicinity of most barrier lagoon systems, one passes through a sequence of barrier lagoon systems that were brought in existence through the flandrian marine transgressions.

Q Of what assistance is this map to you in formulating your opinion?

A Once again, it indicates to me the nature of a barrier lagoon system prior to significant human interference with the area. It is of value in reconstructing the geomorphology of this coastline and it existed prior to the disruption of the lagoon and its barrier that had taken place during the present century.

MR. PARRILLE: We offer into evidence plaintiff's 14.

MR. BITTING: I have the same objection, your Honor. Additional objection is the witness just stated that this map is indicative of what the court can consider or I can consider as significant human interference. They cut a channel into the water, what is apparently the water area, built a couple of piers, and had a dredger in the area of Playa Del Rey.

THE COURT: Same ruling as the court made with respect to plaintiff's 13. Objection is overruled.

[*246] *MR. BITTING: Thank you, your Honor.

THE COURT: Be received in evidence as plaintiff's 14.

[*247] *Q Dr. Orme, I now show you plaintiff's No. 15.

THE COURT: May I interrupt for just a moment, Mr. Parrille?

Dr. Orme, on two occasions, the first with respect to plaintiff's 13 in evidence, that is, the map of 1876 and the second, with respect to plaintiff's 14 now in evidence, the map of September of '87, you were asked whether each of them was helpful to you in forming your opinion — I don't mean to quote verbatim the question put to you — and your answer to each of those questions was "Yes."

To what opinion were you referring?

THE WITNESS: My opinion as to the nature and origins of Ballona Lagoon.

THE COURT: Absent plaintiff's 13 and plaintiff's 14, would you have been able to form an opinion of the nature and origin of Ballona Lagoon?

THE WITNESS: Yes.

THE COURT: Mr. Parrille, I interrupted you at a point when you were out to inquire of the witness with respect to plaintiff's 15 for identification, I believe.

MR. PARRILLE: Yes, your Honor.

Q Turning to plaintiff's 15, Dr. Orme, can you tell us what the origin of this map is?

A This is a map published by the United States Geological Survey of the Department of the Interior of Los Angeles County, specifically, the Redondo sheet of a scale of one inch to approximately one mile, which shows a portion of Los Angeles County flanking Santa Monica Bay and extending from the south end of Santa Monica
[*248] at the northwest end of the map to *Wilmington at the southeast end of the map and including areas of the Palos Verdes Hills, the Segundo Sand Hills and extending up

towards the Baldwin Hills at the mid-north end of the map, including, also, the developing city of Inglewood, at this time, and of Redondo on the coast.

It specifically is pertinent to matters presently under consideration. It shows an area of marsh and beach in the vicinity of Ballona Lagoon — at Ballona Lagoon.

Again, there is a symbolism which is not present on this map, a key which is not shown on this map but, nevertheless, at this time, was being published by the United States Geological Survey separately.

The symbolism would indicate sand hills extending along the shore in South Santa Monica to Port Ballona and then extending further south, behind these sand hills and the sandy beach of this area, again, running parallel with the coast and then an area of salt marsh showing large areas of water connected by the channels, ultimately connecting back to Ballona Creek and to a small extent, also, to Centinela Creek flowing along the southern end of this embayment.

THE COURT: Dr. Orme, will you state the date of the preparation of Redondo sheet, plaintiff's 15, of the United States Geodetic Survey.

THE WITNESS: This edition is of September, 1896 and this was reprinted in 1922.

Q BY MR. PARRILLE: Is there a legend on the back of the map, Dr. Orme, that might assist you?

THE COURT: Assist the doctor in what regard?

[*249] *MR. PARRILLE: Insofar as the symbolism on the map is concerned.

THE WITNESS: Yes, indeed, there is.

Among other things it has a water symbolism, stated "Printed in blue" and if one looks over, then the symbolism for salt marsh is that shown covering the greater part of Ballona Lagoon.

The symbolism for sand and sand dunes is that which characterizes the coast at the mouth of Ballona Lagoon.

Q BY MR. PARRILLE: Of what assistance is this map to you in formulating your opinion as to the origins and nature of Ballona Lagoon?

A Again, it provides evidence of the nature of the lagoon at this point in time and suggests, as did the previous maps, to me, the origins of this lagoon, as a lagoon system developing initially behind a barrier beach or barrier spit.

MR. PARRILLE: We offer into evidence plaintiff's No. 15.

MR. BITTING: I have the same objection, your Honor.

I assume the same ruling by the court?

THE COURT: Same ruling.

Received in evidence as plaintiff's 15.

Q BY MR. PARRILLE: Dr. Orme, I now show you a map denominated as plaintiff's 16.

[*250] *Can you tell us the origin of this map?

A The map published by the United States Geological Survey of the Department of the Interior of a portion of Los Angeles County, specifically the Venice quadrangle published in the edition of 1934 and reprinted in 1942 at a scale of approximately two and a half inches to one mile, or 1 to 24,000.

It covers an area extending from the south end of Santa Monica to the vicinity of Manhattan Beach along the shores of Santa Monica Bay, and extends inland to the vicinity extreme southwest edge of Culver City and covers an area on the coast including Ballona Bay and an area we have referred to in previous maps as Ballona Lagoon. Ballona Creek in this instance now shown canalized.

MR. BITTING: What was that last word?

THE COURT: Canalized, c-a-n-a-l-i-z-e-d.

MR. BITTING: Thank you.

THE WITNESS: And showing also the barrier beach or spit fronting an area designated as Ballona Lagoon

extending south towards Playa Del Rey but interrupted by the canalized Ballona Creek.

It also shows Lake Los Angeles as has been shown on a previous exhibit.

THE COURT: Dr. Orme, did you refer to plaintiff's 16 as United States Geological Survey?

THE WITNESS: United States Geological Survey.

THE COURT: And plaintiff's 15 was a United States Geological Survey or Geodetic?

THE WITNESS: Geological Survey.

[*251] *THE COURT: Thank you.

Q BY MR. PARRILLE: Dr. Orme, what symbolism appears within the area shown as Ballona Lagoon?

A Symbolism here is typical of that used on United States Geological Survey Topographical Maps to designate salt marsh, and it also includes along the coast contours at, I believe, five foot intervals. But anyway, contours showing the character of the barrier beach and the sandy areas, thinned barrier. It does not specifically show sand in symbolism form.

Q Does this map also show the location of the Venice Canals?

A This map shows the location of the Venice Canals, specifically four canals in this area.

It also shows roads existing in an area that was previously in the Venice Canal system, but which by this date, 1934, had indeed been filled in.

Q Does the map indicate that the Venice Canals were linked to the remaining portion of Ballona Lagoon?

MR. BITTING: Object to that, your Honor, the document speaks for itself in that regard.

Also on the grounds that he hasn't laid a foundation you can tell they are on that particular map.

THE COURT: Do you care to withdraw the pending question?

MR. PARRILLE: I will withdraw the question.

Q Does the map indicate the location of the remaining portion of Ballona Lagoon?

THE COURT: Excuse me for interrupting. For the benefit of people who may have occasion to read the
[*252] transcript of the *testimony, would it be convenient for counsel to refer to a map by the name that we have baptized? I imagine you are now referring to plaintiff's 16?

MR. PARRILLE: Yes, we are, your Honor.

Q Dr. Orme, does plaintiff's 16 refer to a remnant of Ballona Lagoon?

A It does.

Q And what is that remnant?

A Ballona Lagoon is here designated as an area of water approximately one mile in length and a few score feet wide running parallel with the shore and inland of the barrier beach immediately along the shore.

THE COURT: When you use the term "score" are you referring to 20?

THE WITNESS: Yes.

THE COURT: 20 feet?

THE WITNESS: 20 feet, yes.

Q BY MR. PARRILLE: Referring again to plaintiff's 16, does the map indicate that there is a body of water connected to Ballona Lagoon?

A It shows a network of channels behind the inner line of sand dunes themselves with small feeder channels and with a canalized channel in this vicinity.

It also shows Lake Los Angeles feeding into Ballona Lagoon, and one must presume from this evidence that these channels here are but a stylized version of a great deal of drainage that would occur from the salt marsh toward the channels and via these channels into the lagoon.

[*253] *Q Of what assistance would be plaintiff's 16 to you?

A It shows the nature of Ballona Lagoon and its barrier beach in 1934 at a time when significant human interference had now begun to modify its orginal characteristics, including the drainage of this lagoon as a result of the canalization of Ballona Creek. In previous maps, we have seen Ballona Creek flowing into the northern end of Ballona Lagoon and its salt marsh and then distributing itself in a rather random network of channels through the lagoon area.

This would clearly impose a significant flood hazard to the marsh as a whole, and perhaps to the surrounding lands and, presumably, the canalization of Ballona Creek was taken in part to convey runoff more rapidly through this area to the sea.

MR. PARRILLE: We offer this map, plaintiff's 16, into evidence.

THE COURT: No objection? Be received in evidence as plaintiff's 16.

MR. PARRILLE: Thank you, your Honor.

• • •

[*264] *BY MR. PARRILLE:

Q Dr. Orme, did you obtain any articles or reports or treatises on the geological subsurface or location of waters in the area adjoining or in Ballona Lagoon?

A Yes, I consulted the previously mentioned work by Poland, et al., on the "Geology, Hydrology, Chemical Characteristics" in the Santa Monica area, which is a geological water supply paper published in 1959, and is a very thick tome.

Q Can you tell us, after reviewing this document, what you were able to learn about the area surrounding
[*265] *Ballona Lagoon or inland?

A The water supply paper in question, by its very name, addressed the matter of water supply in the area, and to do so it had to address the various geological

formations that exist in the subsurface as well as the sources of water on surface and contributing to the subsurface water supplies.

To this end, it therefore described the geological history and structure of this fairly large area extending from Santa Monica to Torrance, and defined a sequence of events based upon bore hole records and other excavation records extended from the earlier part of the Cenozoic era through to the present time.

It did not, in fact, specifically address the origins of Ballona Lagoon but it did address matters that were pertinent to that origin, and I was able, from that data it presented, together with some field work and some interpretation of aerial photography and existing maps, to add further to the history of the lagoon from that basis.

Q Did you chart out the various levels of the sea from pleistocene to helosticene time.

THE COURT: I am sorry — levels of the sea?

MR. PARRILLE: Yes, your Honor, sea levels.

THE COURT: Would you rephrase that question?

Q BY MR. PARRILLE: Were you able to determine various levels of the ocean at sea level from Pleistocene to Holocene time?

[*266] A In an approximate sense, yes. I should add, *perhaps, by way of illustration that the levels of land and sea in the Los Angeles Basin have been extremely varied over the more recent period of geological time and it is important to understand the nature of the sea levels in order to understand how Ballona Lagoon first came into existence. And if I may, I could just address that briefly.

THE COURT: Would you assist me, Doctor? It's been a long time since I studied geology, and you are about to talk about some geological eras.

I remember Cenozoic.

THE WITNESS: Archeozoic.

THE COURT: And Paleozoic.

THE WITNESS: That's right.

THE COURT: Would you give that again, so that I can better follow your testimony.

[*267] *A Well, the Cenozoic is the era in which we presently exist. It has been in existence for approximately 70 million years. The Cenozoic is, in turn, divided into periods and we recognize two periods in the Cenozoic: Tertiary, T-e-r-t-i-a-r-y, which lasted from approximately 70 million years ago until approximately 3 million years ago and, more recently, the quaternary period which lasted from 3 million years ago to the present and is sometimes loosely dubbed "The great ice age", although for this era, it is somewhat irrelevant, the ice age.

The quaternary period is, in turn, divided into epochs, of which there are two: The Pleistocene, P-l-e-i-s-t-o-c-e-n-e which lasted from approximately 3 million years ago to approximately 10,000 years ago and the Holocene, Ho-l-o-c-e-n-e which lasted from about 10,000 years ago to the present time.

Now, as far as Ballona Lagoon is concerned, it is important to recognize that throughout the latter part of the Tertiary period, that is, during the epochs that we know as the Pleistocene, the Los Angeles Basin, including Ballona Lagoon, was under water — substantially under water — under several hundred feet of ocean, and although the record is rather imperfect we know that during the late Tertiary period and the early Pleistocene that sea level came in and out on several occasions but, for the most part the shoreline — the main shoreline — of the continent, at that time, lay to the east of Ballona Lagoon.

During upper Pleistocene times and, specifically, during the last glacial stage which we know in North America
[*268] *as the Wisconsin glaciation because of its characteristic type deposits in Wisconsin, the abstraction of water from the oceans and its piling up on land in the form of land ice as the rather massive sheets — these were particu-

larly the Laurentian sheet of Canada and the northern and central portions of the United States and the large ice sheets of Europe and Asia as a result of this withdrawal of water from the oceans and its locking up as land ice on land. Sea levels fell from approximately its present level to well below present sea level.

In doing so, it probably reached depths of in excess of 300 feet below sea level.

[*269] *Therefore, we have to envisage a Santa Monica Bay during this last glacial stage, shall we say approximately 20,000 years ago — Santa Monica Bay — wherein the bay was much farther west beyond the present coast than it presently is.

Sea level was also lower, perhaps a hundred meters or 300 feet or more lower and, in other words, the shoreline lay well to the west of the present shoreline.

As the last or Wisconsin glaciers began to melt — and we estimate from evidence elsewhere in North America and Europe that this began approximately 20,000 years ago — as the glaciers began to melt so they slowly began releasing this water back into the oceans and ocean level, in turn, began rising.

It was rising against the land and it would, therefore, rise against the Los Angeles basin, against the Santa Monica mountains.

In doing so, it would have infiltrated into any river valleys and other embayments that might have existed in this 20,000 year old landscape.

In doing so, therefore, it began to create embayments along the present coast, flood them with water and then rise through them towards its present sea level stand.

This rising of sea level which accompanied the melting of the last glaciers is known in geological terms as the Flandrian Transgression. It was a rise of sea level that began 20,000 years ago, approximately, and it continued at varying rates until about 5,000 years ago by which stage the Wisconsin glaciers had entirely melted except

[*270] for a few remnants *here and there in the Canadian Arctic and Scandinavian Highlands, and so on.

This Flandrian Transgession was responsible for bringing the coastlines in the world into their present configuration, as we know them, in broad outline. That is, for bringing the sea up against the Santa Monica mountains, roughly along its present line and against the Los Angeles basin, Palos Verdes Hills and other areas, other regions of this area.

One of the features of this transgression was that the sea rose into a broad embayment created during this preceding period of low sea level by the Los Angeles River or its antecedent.

It appears that during the last glaciation, say, 20,000 years ago, the Los Angeles River, at least, for part of the time, flowed out from approximately this area where we are here in the downtown region and just south of the downtown area; it flowed west to what was called or what is now called the Ballona Gap that lies between the Baldwin Hills and the Beverly Hills.

And from the Ballona Gap it continued in a west-southwest direction to, in a broad swathe of flood plain and river deposits, across the present coast in the vicinity of the region betwen Playa Del Rey and Venice or Santa Monica.

This course of this proto Los Angeles River is reflected —

MR. BITTING: I beg your pardon.

THE WITNESS: This course of the proto Los
[*271] Angeles River *is a river that has antecedents. It is a prior river in that area. The Los Angeles River, at that time, is reflected in a very well marked water bearing horizon of sands and gravels, sometimes simply known as the 50-foot gravel because in the Ballona Gap it occurs at a depth of about 50 feet.

Poland and his colleagues, in the water supply paper, a map is shown of the water bearing gravel that traces the

course of the Los Angeles River at that time. They also show that at another time it may have flowed directly south, approximately along its present course to join with the Rio Hondo and with the San Gabriel River before reaching the sea in the vicinity of Long Beach.

One has to understand that rivers in this area, of course, are still subject to greater regularity, that, at, some times there are massive floods and at other times there are periods of prolonged drought. When the floods come down it is possible for streams to occupy any one of a number of courses or, at least, it was until these major rivers of the area were canalized for flood control purposes.

Certainly, when man first occupied — at least when European men first occupied — the Los Angeles Basin one could envisage the Los Angeles River as braiding, rather like the way in which one's veins braid in one's arm and moving all over a flood plain with no well confined channel. Rather, as some of the rivers in the desert now flow across the foothills after a flood.

It has been man who has confined them to more restrictive courses in recent times.

[*272] *During late glacial times a portion of the Los Angeles River, at any rate, flowed west-southwest through the Ballona Gap, north of the Baldwin Hills and out through the present area of Ballona Creek.

In doing so, it cut a valley below present sea level. It was always trying to adjust to a lower sea level somewhere off the coast and throughout the Ballona Gap.

Poland and his colleagues, using their own and prior borehole records, have revealed the continuous trace of this water-bearing stratum.

So, when the sea level rose against the coast it rose, amongst other things, into the river valley that had been created by this proto Los Angeles River and in doing so it was also constrained by certain other physiographic characteristics of the immediate coastal area. It was constrained, for instance, by the escarpment that lies south of the Ballona Lagoon at the present time. It was

constrained by the general configuration of the area and, if I may, I would like to go to some charts that I have prepared that will illustrate this; will that be appropriate?

• • •

[*275] *Q Can you tell us what other documents, maps, or photographs you utilized to assist you in preparing this chart?

A I used the series of United States geological survey topographical maps going back to the original one that I saw in 1896, and some of the earlier coast and geodetic survey charts that we have already entered into as exhibits.

I used a series of aerial photographs, and I also used my own field observations regarding the approximate dimensions of Ballona Lagoon as I would have conceived it coming into existence about 5,000 years ago.

I should point out at this stage that I referred to the flandrian and transgression. This began in late Pleistocene times and continue through into the Heloscene. The Pleistocene-Heloscene boundary occurred approximately 10,000 years, so the transgression is also time-transgressive. It is not Pleistocene or Heloscene. It continued through to about 5,000 years ago.

In doing so, it flooded into this channel that had been carved in part from time to time by the early Los Angeles River, and the early Los Angeles River probably came through in this general area and then buffered against the escarpment and ran out towards the lower sea level at the time.

THE COURT: Excuse me, Doctor, you said probably ran along this general area. You are still referring to plaintiff's 20?

THE WITNESS: Yes.

[*276] *THE COURT: Would you be more specific as far as the record is concerned when you make reference, then,

"In this general area". You might make a grid on plaintiff's 20, if you wish.

THE WITNESS: I prepared these four charts as my concept of how Ballona Lagoon came into existence following this transgression.

On these charts, plaintiff's exhibit 20 and those following, the former area of Ballona Lagoon as originally initiated by the transgression is shown by this approximately triangular area, this right-angle triangle with its right-angle base at Playa Del Rey. This is a highly stylized diagram.

THE COURT: Which right-angle triangle?

THE WITNESS: This one down here.

In other words, one has to envisage that kind of shape. This is a highly stylized diagram. It is not drawn specifically to scale, but the former dimensions of this lagoon were approximately three miles on the seaward end from Venice to Playa Del Rey, approximately three and a half miles from Playa Del Rey, approximately three and a half miles from Playa Del Rey to where Centinela Creek entered the Lagoon, and then approximately four a half miles along the hypotenuse of this triangle, which would have been the northern side of the lagoon.

The Los Angeles River flowed into this general area on the northeast side or hypotenuse side of this triangle, and this line indicated here on exhibit 20 can only be considered an approximate position as to where the river
[*277] *entered, but it then entered somewhere along the hypotenuse and flowed out seaward.

When sea level rose against the land during this flandrian transgression, it rose into part of the river valley that had been carved out by the Los Angeles River and by its tributary, Centinela Creek.

[*278] *It defined this rather striking right-angle triangle because of the preexistence of the Ballona escarpment to the southeast and the line of conspicuous bluffs and

because of the regional slope on the hypotenuse side is one in which all the rivers were draining southwest, south-southwest from the Santa Monica Mountains, from Beverly Hills, Westwood, Brentwood area, draining south-southwest, with the regional slope towards this side, towards the hypotenuse. So, when the sea rose against this, they rose against a sloping plane, sloping into the sea from the north and east.

Plaintiff's exhibit 20 has been designed just to give an indication of what probably occurred immediately following this transgression. A large Ballona Lagoon was initiated. At present, this would have been entirely open to the sea, but almost immediately sea level established, sand began drifting along the shore from the north to build out the beginnings of a barrier spit. Because beach drifting or littoral drift is not entirely from the northeast area at the present time —

THE COURT: Excuse me, littoral, L-i-t-t-o-r-a-l?

THE WITNESS: Yes, because littoral drift is not entirely from the northeast at this time, but also periodically comes from south of west, we also conjecture that there may have been a small amount of sediment building out from the southern side. This is designated on plaintiff's exhibit 20 by the red area that has been stippled.

Within the embayment thus created and the margin of
[*279] this embayment, I have straightened, just for *simplicity's sake, sediments brought down primarily by the Los Angeles River, but to a lesser extent by Centinela Creek, would have begun building out land area into the lagoon.

At first, probably quite rapidly because the entire portions of this lagoon would have been very shallow. One has to foresee an area that shelved up towards the land and, therefore, along its inner margins was very shallow. This material would have been in the form of sand, gravel, but also very much smaller materials in the form of silt and clay building out into the water first as mud flats and then as the mud flats themselves slowly rose above water level, which would have been at that time sea level, so these would have been slowly colonized

by vegetation. Vegetation which would be adaptable to the saline environment of the lagoon.

The Los Angeles River almost certainly bifurcated into a number of contributory channels such as I have shown here, because this is certainly indicated by the charts of the 19th Century as having happened a little later, so it has a number of outlet channels figuring in towards this embayment.

[*280] *And there is also a small amount of back beach deposition in this area because of the lack of adequate escarp by stream or wave action in these areas.

So I think one can conjecture that at about 1,000 years after the termination of the transgression, the transgression terminating about 5,000 years B.P., about 4,000 years B.P. there probably had been deposition in the order of the magnitude shown here.

I then prepared a second chart which will be plaintiff's exhibit 21 to demonstrate what happens next.

Again, these are ball park figures. They are conjectural and I am prepared to defend them as an academic.

With sea level stable and with sediments being contributed to this lagoon area from the land one has a continued building out of the landward end of the lagoon. At the same time, the water in the lagoon begins to shallow as muds, that is, silts and clays and some sand build up the floor of the lagoon and the mouth of the lagoon itself continues to move across the barrier beach, the barrier spit begins to accumulate materials across the mouth of the lagoon in the form, for instance, here of barrier islands.

Now, again, this is conjectural and it may well have been there was a more or less continuous spit or it may have been that here was some upward building of sand with wave action to form these low bars in this embayment.

The barrier spit on the southern end would also have extended northwards a short distance, but no great distance, because the predominant littoral drift, movement

[*281] of sand along *the coast, is from the north and probably 90 percent of all the sand along the coast comes from the north.

Within the lagoon, as mud flats begin to build up, some small islands would come into existence, very low muddy areas, and these would be colonized, again, by salt marsh or halophytic vegetation which consists of species native to this coast, salicornia, which is a pickle weed and spartina foliosa, which is a rice growth and these grow well beneath the tidal waters.

So we have a situation of a developing barrier lagoon system in which the barrier is beginning to form, distinctive characteristics.

The lagoon is beginning to fill in with sediment from the land and perhaps with some sand wash in from the sea.

This carries us to plaintiff's exhibit 22 which picks up the story a further 1500 years towards the present, at approximately 500 B.P. or around A.D. 1450.

By then, I imagine the lagoon, interms of sedimentation, was well advanced. The Los Angeles River or its actual feed portions would still be draining towards the lagoon. Centinela Creek, likewise, and the area of water had now substantially diminished.

The island within the lagoon, further mud flats come into existence, being colonized, are aiding in this reduction and the size of the lagoon.

At the same time, the barrier beach would have been very much longer in terms of its barrier characteristics, very much more effective as a barrier and only a com-
[*282] parative *narrow gap would now exist between the two opposing spits.

This would be sufficient to maintain an inlet, ingress of tidal waters and would be maintained almost certainly by the flushing action of waters draining from the land.

But even that flushing, of course, during periods of drought, would be ineffectual and, therefore, I envisage at about this time it may be quite likely that the barrier

closed entirely across but this does not invalidate this as a barrier lagoon system because this is a characteristic of barrier lagoon systems worldwide. They do build across the mouths, accumulate sand during periods of drought inland, periods of strong onshore wave action and then during the next storm, for example, October or November or December of a particular year, these barriers are breached by flood waters draining from the land.

And, at that time, this area would have been exceptionally low anyway and would be entirely flooded by waters draining from the land until they build up to the level where they begin to escarp or change through here.

[*283] *The change may have occurred at any point but the evidence suggests that where the predominant drift of sand is from the north that the outlet to Ballona Lagoon would have been toward the southern end.

To complete the picture, I summarize in a rather simple sense the United States Topographic Map for 1896 in plaintiff's exhibit 23 and this shows the logical extension of what had been happening a few hundred years previously.

By the 19th Century it would appear that sediments had been fed into the lagoon to the extent that the area of Abraum water was now substantially diminished. This is supported by the map evidence of previous exhibits, coast and geodetics survey in 1876, 1887, and the topographical map of 1896.

There were bodies of standing water still here and there but the majority of the lagoon had almost certainly been pushed by the sediments flowing from the land, or almost certainly being pushed against the coastal barrier.

During this period there was quite a lot of change from year to year, perhaps in the actual location of islands or small lagoons as a result of the very limited relief that these areas had. These were low salt marshes and could be escarped out by floods and the silt may be

deposited elsewhere, so, that in instances, there is no reason to worry why this is in existence here and not there because there was a lot of sediments going on and [illegible] waters.

[*284] [illegible], on this chart, plaintiff's exhibit 23, I have shown an area in brown which represents wind blown sand *that is accumulating on the barrier beach and also drifting across into the lagoon and, particularly, piling up on the salt flats — salt marshes — that occurred immediately to the east of the present area of Ballona Lagoon. This is well demonstrated in the field, in fact, on the east side of the present Ballona Lagoon. One can see wind blown sands actually lying somewhat impregnated with oil seepage, but lying on top of salt marsh deposits containing roots and so on, so, that is how this came into existence. The sand drifted across.

It was demonstrated on one of the aerial photographs that we saw and that is how one comes to explain the sand there and down here and also up here, lying more or less along the present coastline, but inland from the main barrier.

[*285] *In this cross section in the bottom right-hand corner of exhibit 23, I have drawn a very simplified cross section through the lagoon as I conceive it, showing the so-called 50-foot gravel of Poland and his colleagues, which represents the course of the Los Angeles River during late Pleistocene times, lying in turn on Pleistocene marine deposits of much greater age. They need not concern us, but they happen to form the floor of the channel in which the Los Angeles River was flowing, and then it was over the gravel that sea level rose and flooded inland to an elevation that was consistent with approximately present sea level.

The red stippled area represents the barrier beach. We are looking at a section from "A" to "B" on plan, and "A" to "B" in profile. The red stippled area represents the barrier beach with blown sand, the green stippled area representing the region of salt marsh sedimentation, that is, of silts, clays and perhaps coarser

materials, the sedimentation made by the processes of vegetal growth, particularly associated with spartine and salicornia species, and towards the lagoon itself topped with a small amount of sand wafted across from the open beach.

The prevailing winds are from the west in this area, west-northwest, and it is quite easy for the sand and the backshore to be winnowed when it is dry and carried inland to the lagoon and, indeed, within the lagoon itself much of the silt and clay is intermixed with sand according to Poland and his colleagues.

• • •

[*292] *MR. BITTING: I have conferred with counsel for the plaintiff, your Honor, and he has no objection to our marking this particular document which appears to be a certified copy of the plot of Ballona Rancho finally confirmed to Augustin Machado, et al, served under the orders of the Attorney General, by Henry Hancock, Deputy Surveyor, July, 1858.

THE COURT: And that was the Hancock survey to which you referred earlier?

MR. BITTING: That is what I had reference to.

THE COURT: It will be marked defendant's B for identification. So marked.

• • •

[*344] *Q Dr. Orme, did you familiarize yourself with defendants' exhibit B?

A Yes.

Q Can you show us defendants' B, which I believe is presently on the board.

A Defendants' B is a plat of the Ballona Rancho surveyed under the orders of the United States Surveyor General by Henry Hancock in July 1858.

Q What area is shown or denominated on this survey?

A An area referred to as the Ballona Rancho lying,
[*345] *primarily, in Township 2, south of range 15 west, and including a portion of an area referred to as the inner bay that lies behind the narrow strip of land along the so-called shore water bay of the Pacific Ocean.

Q Does the map show—

THE COURT: By "map", are you referring to defendants' B?

Q BY MR. PARRILLE: Does defendant's B show a channel inside the inner bay?

A It does.

Q Can you point that out to the court on defendants' B?

You are pointing in a northerly to southerly direction. What are the objects to both the west and east of that channel?

A The objects to the west, I would assume to be from my further field investigation, the barrier beach fronting the inner bay, lying between the inner bay and the open ocean; and the object to the east consists of a spit extending north from stake No. 23 and then a further island lying to the north of that.

• • •

[*346] *THE COURT: The pending question, Dr. Orme, is: Does the channel to which you made reference, a channel appearing on defendants' B, appear on a chart prepared by you which has been received into evidence in this case as plaintiff's 22?

• • •

[*347] *THE WITNESS: The plat, defendants' exhibit B, is an extremely poor plat that addresses primarily the matter of boundaries concerning the Ballona Rancho, and it shows the inner bay and such landfalls in and surrounding the inner bay in a purely stylized form drawn in undoubtedly, I would say, by eye, after the main survey of the boundaries of the Rancho had been completed.

My own stylized diagram, plaintiff's exhibit 22, is likewise stylized to make the point concerning the development of the lagoon through time. It is possible for me with my knowledge of the inadequacies of both these exhibits to, nevertheless, say that yes, I can locate approximately the area of this channel on defendants' exhibit B, also on plaintiff's exhibit 22.

I do this by reference, primarily, to the location of the barrier beach along the open coast.

• • •

[*357] *Q Dr. Orme, as to the channel which appears on defendant's B, the map of 1858, does that channel also appear on plaintiff's 13, the United States Coast and Geodetic Map of 1876?

A Yes.

Q As to that channel that appears on plaintiff's 13 in 1876, does it appear on plaintiff's 14, the map of 1887?

A Yes.

Q As to the channel which appears on plaintiff's 15, the map of 1896, does it appear there?

A Yes.

• • •

[*360] *Q BY MR. PARRILLE: Dr. Orme, do you have an opinion as to whether or not a channel existed in the same location in 1839 as in the year 1858?

A Yes.

Q What is that opinion?

A My opinion is that in view of the evidence for such channels throughout the latter half of the 19th Century, as demonstrated by these maps and plats exhibited here, that such a channel must, in all certainty, have been in existence in the years and decade prior to the first plat.

[*361] *The later maps and charts, defendants' exhibits 13, 14, and 15, all indicate areas of channel running parallel

with the shore. They all indicate areas of open water in Ballona Lagoon behind the barrier beach. They all indicate areas of marsh, and some of these things are brought out in this imperfect plat in the 1850's.

THE COURT: By the "imperfect plat," you are referring to —

THE WITNESS: Defendants' B.

It is my opinion, therefore, that this channel, in particular, that lies inland of the barrier beach must have existed for some considerable time prior to the date of defendant's B plat and that by some considerable time, I mean several decades if not a hundred years or more.

Q BY MR. PARRILLE: Do you have an opinion as to the size of the channel in 1839?

A I would imagine that, again, as an opinion, that the channel was probably somewhat larger in terms of a few yards of additional width in 1839 than it was later. It may have been somewhat deeper in terms of a few feet of additional depth.

These increments in depth and width are due to the addition of sediment having occurred after 1839.

Q Do you have an opinion as to whether or not the channel existing in 1839 differs in location from the channel in existence today?

A I have an opinion, yes.

Q What is your opinion?

[*362] *A My opinion is that the channel shown — suggested as existing in 1839 and shown in the 1850's, the 1870's, 1880's, is in fact still represented at the present time by the remnant of the channel that lies to the northwest of the entrance to Marina Del Rey, and is presently designated as Ballona Lagoon.

Q Do you have an opinion as to whether or not the channel existing in 1839 differs in size from the channel in existence today?

A The channel existing in 1839 would almost certainly have been larger in terms of width, depth, and length in 1839 than it is today, as a result of the fact that in 1839 less sedimentation had taken place within the channel.

Sedimentation is a cumulative process, for the most part, through time. One can anticipate that over time such channels are slowly infilled with sediment, although this cumulative effect is a net effect, there being a flushing action associated with the tidal and stream scour that tends to remove a portion of all sediment accumulated within such situations.

Q Thank you, you may resume the stand, Dr. Orme.

As an expert and scholar in the field of coastal ecology, have you formed an opinion as to whether the Ballona Lagoon contributes the ecology of the coastal area of Southern California?

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[*366] *THE COURT: The pending question, Dr. Orme, which you may answer, reads as follows: "As an expert and scholar in the field of coastal ecology have you formed an opinion as to whether the Ballona Lagoon contributes to the ecology of the coastal area of Southern California?"

THE WITNESS: Yes.

• • •

Q What is your opinion, Dr. Orme?

A Ballona Lagoon, as it presently exists, is the remnant of a much larger coastal ecosystem, focusing on a salt marsh and a coastal barrier beach. As such, even in its remnant form, it has significant scientific and educational value, both to formal educational institutions and to the public at large.

Specifically, as a body of water, subject to tidal influences, as the remnant of a larger ecosystem that includes a salt marsh flora or the remnants thereof, it

forms a very valuable resource from the educational point of view, for the education of students and the public.

There are sources of the lagoon which include the inorganic or mineral characteristics of the habitat, specifically, the sand, silt and clay form the banks and bed of the lagoon and also the organic resources of the habi-
[*367] tat, specifically, *various species of salt marsh vegetation such as those that I indicated yesterday, to include, but not only be confined to salicornia species, and salt grasses. They are typical of a salt marsh environment.

And it also includes the animal portions of the environment, including a molluscan fauna, including clams and other lagunal animals.

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[*369] *CROSS-EXAMINATION

BY MR. BITTING:

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[*395] *Q Now, I believe yesterday, Dr. Orme, you described a phenomena known as littoral drift.

A Correct.

Q As I understand it, littoral drift is an action of the wind and tide as it affects the coastline depicted on plaintiff's exhibit 13 in a southeasterly direction along the coastline.

A No, but I would be prepared to expand and correct your interpretation.

Q All right.

A Littoral drift is a movement of sand and other materials in suspension and in bottom transport along the shore or along the nearshore bottom. This is a product of a prevailing current that is moving, in this particular instance, from north to south. This current, in turn, being induced by wave action which is, in turn, induced by the prevailing wind.

Q I believe you stated that this action occurs in a southwesterly direction only approximately ten percent
[*396] *of the time.

A Yes.

Q In other words, if one goes down to the sea coast in Santa Monica Bay, one will find that the sand on a groin perpendicular to the coastline is more prominent on the north side of the groin than on the south side of the groin?

A Correct.

Q As I understand your testimony, this is the reason why the area that you have described as the barrier beach over the years was formed, basically, groin from north to south rather than from south to north.

A Correct.

Q And this phenomenon known as littoral drift would occasionally cause a closing of any opening wherein the water in Ballona Lagoon flowed into the ocean?

A A temporary closing, yes.

Q When you say a temporary closing, Dr. Orme, do you mean a matter of six months, perhaps?

A I would mean primarily a matter of days, perhaps weeks — but certainly, for the most part, not more than a few months.

Q What event might occur that would create an opening?

A Two events might occur. First of all, a major storm surge occurring in response to a westerly or southwesterly or southerly storm might push wave action against the barrier beach and cause knit scour on the
[*397] beach face. *This would come down the beach, claw it away, pull it back seawards and, in that way, begin to weaken the barrier holding back the waters behind the barrier.

Such a storm surge might cross the barrier and actually breach by just wave erosion, actually breach the barrier

beach. More commonly, however, such a breach is maintained by the discharge of water from the land. The water would be draining throughout the Ballona Creek watershed and the Centinela Creek watershed and the various ramifications of the drainage network that drains into the Ballona Lagoon, and these would periodically build up until they sought an outlet towards the sea, which would be their natural base level.

In other words, the level to which water draining from the land would attempt to reach and, in that way, they would seek to breach the barrier beach at the lowest point, at the weakest point, at the narrowest point, and these points would commonly be where the barrier beach was last closed. So, there is a flushing action associated with flood waters from the land that will tend to maintain outlets through barrier beaches for long periods and, in Southern California, this would be particularly during the winter rainy season from October through March, at least, and probably continuing into the summer months one could envisage under natural conditions the maintenance of an open inlet from the lagoon to the ocean.

[*398] *Q So then, if I understand your testimony, in a particular year if the opening had closed, as you have described, and we experienced a particularly dry year the barrier beach might not be opened for a period nearly a year?

A That is theoretically possible.

Q In your work in connection with your preparation for testimony here did you make an investigation of weather conditions in the 19th Century as it may have affected this area we know as Rancho Ballona?

A I did not make an investigation of such weather conditions because the records are inadequate, but I presupposed that weather conditions in the 19th Century were not dissimilar, significantly, from those of the present time.

Q You may take the witness stand.

Now, directing your attention to defendant's exhibit B, the plat of Ballona Rancho, I note that at least in the area platted on here there is no apparent opening to the ocean; is that correct?

A That would appear correct.

Q So at this particular point in time when Henry Hancock did his work, at least, with respect to matters depicted on exhibit B there was no opening to the ocean?

A If you are asking me for an opinion on that, I will state that this map is totally inadequate to really state with any definition that there was no such opening. One has to bear in mind the cartographer's artistry in designing a map such as this. This is obviously a highly stylized
[*399] representation of the inner bay and as they were *mainly concerned with defining the boundaries of the Rancho, it appears that they probably may have, quite conceivably, waded through water here along the barrier.

I don't think the absence of an outlet means there was no outlet or, if it does, it may just have been on the day that they surveyed there was no outlet. It does not mean that the next day the outlet was not in existence.

Q But, as I understand your testimony, Dr. Orme, it is possible that the outlet could have been blocked at that time for several months, at least

A It is possible but improbable.

* * *

[*403] *Q Coming back to plaintiff's exhibit 13, I find that what you have described as the opening through the barrier beach at what appears to be the extreme south end of what you have described as the barrier beach, is somewhat farther south than the opening on plaintiff's exhibit 14 where the "New Piers" are indicated.

A Yes.

Q And, I take it, the reason for this apparent change is at least based upon one factor, being that the opening

on the south end on plaintiff's exhibit 13 closed between 1876 and 1886.

MR. PARRILLE: Objection.

THE WITNESS: Not necessarily.

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[*404] *THE WITNESS: The position of waterways through barrier beaches is highly variable. Water may continue to flow through a barrier beach, over a barrier beach in maintaining a channel through such a beach, while eroding on one side of the channel and depositing on the other side. In such a way, the channel may, in fact, migrate several feet, several score yards on occasion, in one direction or the other, up or down the coast, without ever actually closing.

The fact that one has here on one map dated in 1876 the position of the entrance at the extreme south end of the barrier lagoon complex, and then 11 years later one has the apparently engineered entrance to barrier or exit from the barrier lagoon system somewhat farther north causes me no great concern. I rather imagine that the engineers in 1887 were simply trying to stabilize a channel that had migrated to that position during those 11 years, and it would be possible at any time, both before and after 1886, for the flood water from the land to punch a major channel through the barrier beach at any position.

• • •

[*405] *Q Dr. Orme, in your opinion, what was the first significant interference by man with the barrier lagoon system you have described?

A By "significant", I am uncertain as to the meaning of this word.

If you mean statistical significance, then, I have no basis for measurement upon which to establish such statistical significance but, if you mean in terms of my
[*406] opinion, *in terms of my observations and opinions concerning this area, I imagine that the pre-Columbian

episode of occupation of this area would have had no significant impact and that significant impact may well have occurred perhaps during the period of Spanish land settlement in the 18th and early 19th Centuries and may have been associated, for example, with cattle stomping in the salt marsh and pummeling the barrier beach and generally watering themselves in the briny.

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Trial Testimony of Carrol A. Richards

[*723] *CARROL A. RICHARDS,

called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: Carrol, C-a-r-r-o-l A. Richards, R-i-c-h-a-r-d-s.

[*724] *DIRECT EXAMINATION

BY MR. PARRILLE:

Q Can you tell the court what your occupation is.

A I am a geologist.

Q By whom are you employed, sir?

A The City of Los Angeles.

Q Any special department of the City of Los Angeles?

A The Bureau of Engineering with the Department of Public Works.

Q Can you describe your educational background for us.

A Yes. I received a bachelor of science degree in geology from the University of Miami, Coral Gables, Florida.

I received a master of science degree in geology from the University of Southern California in Los Angeles. That was in August of 1957.

Q Can you describe your work experience after completing your master of science degree at the University of Southern California.

A Yes.

I have worked for Western Gulf Oil Company for about a year or less than a year, on offshore exploration and where I correlated the offshore formations with

onshore formations and for two years I was with the California Division of State Lands, where I worked with
[*725] state-owned lands, *mineral deposits thereon, which included mineral deposits, especially oil, on tidelands.

In 1959 I entered employment with the City of Los Angeles, working for three years in petroleum administration then went to the Department of Public Works where I have specialized in engineering geology for the last 15 — going on 16 — years.

Q Can you tell us your most recent work experiences as a geologist.

A Yes.

I have worked on landslides as far as detecting them, investigating the causes and remedial work that it would take to repair them and stabilize the slopes, investigate hillside developments where tentative tracts are requested by developers on hillside lands.

In this work I review consulting geologists' reports and check them for any omissions or anything that I would like to add to their recommendations for stabilizing slopes on these tracts.

I work with other agencies in the city and city officials on all land that is owned by the city, in trust by the city, for recretation and park sites, for streets, roadways, sewer lines, drainage devices of all kinds or geologist related, as far as flood control channels and outlets and pipes, rights-of-way and, of course, street rights-of-way, as far as proposed rights-of-way. Sometimes we recommend that they change the proposed alignment because of geologic hazards.

[*726] *And I do a little bit of work on the side, as far as consulting. Friends occasionally ask me to investigate a site. I did a site down in South Laguna on a beach area where sea erosion had developed a cave and had caused erosion of the sea cliffs in front of the house and this cave has caused a dangerous condition because the house is somewhat undermined because of this sea cave.

[*727] *Another area around Arcadia where ancient sand dunes or barrier combination of sand dunes and barrier island has drifted over unturned Pliocene sediment. Well-indurated Pliocene sediment, and the stability of this area was in question, and I made an examination and report on that.

Q Can you tell the court if you have ever instructed any students in courses in geology?

A Yes, since 1972, I have taught classes of engineering geology at Valley College in the evening, and I am presently teaching at Valley College a class in physical geology, and I teach a lab course at Trade Tech on Thursdays, my day off. In the evenings on Thursday, I teach a Burbank adult school class in rocks and minerals of California. And on Monday, I teach a class on the geology of California.

Recently, I conducted a seminar down at Cal-State Long Beach in conjunction with a state geologist, Dr. Slauson, in the "Environmental Aspects of Public Works Projects."

Last year, I conducted the same type of seminar with a consultant by the name of Mr. Lee Bauvier.

Q Have you been appointed to any boards since you have become a geologist?

A Yes, sir, I have been appointed to the Board of Planning Commissioners of the City of Burbank, where I served for three years.

I also have served as a vice president — which is not
[*728] connected with geology — but vice president of *Santa's Workshop, Inc., a nonprofit organization, charitable organization.

I also served on the Board of the Hindustani Bible Institute, a missionary organization.

Q Have you published any papers in the field of geology?

A Yes, I published "Radioactivity Associated with Petroleum" back in —

THE COURT: Would you keep your voice up a bit, sir.

THE WITNESS: Yes. I published a paper entitled "Radioactivity Associated with Petroleum" for the S.C. Engineer, one of my first efforts back in 1953; and "Radioactive Deposits in the Twenty-Nine Palms Area" which was published in a local mining journal, California Mining Journal, and the Denver Mining Record.

Then, more recently, I have published a paper "How the Geologist Can Help Your City". This was published by the American City Magazine, 1970.

Still more recently, I had a paper published in a special publication by the Engineering Geologists Association Convention Bulletin, called "The Environmental Aspects of Petroleum in the Urban Environment."

Q BY MR. PARRILLE: Are you a member of any related associations in the field of geology?

A The American Association of Petroleum Geologists, and the Association of Engineering Geologists and a member of the Colorado Mining Association.

[*729] Q Are you a registered geologist with the State *of California?

A I am.

Q Can you tell us your number, please.

A One hundred.

Q Are you a registered engineering geologist in the State of California?

A I am.

Q Can you tell us your number.

A Fifty.

Q Can you explain what an engineering geologist is, sir?

A Investigations of sites for geologic hazards, for geologic conditions, for the use by an engineer in prepar-

ing plans for building or design of some civil engineering project. This is mainly it.

Q Were you requested by the City Attorney of the City of Los Angeles to undertake a geological investigation of Ballona Lagoon to determine its origin?

A I was.

• • •

[*732] *Q Now, when did you first begin your investigation into the geological origins of Ballona Lagoon?

A 1966.

Q What was your first step in initiating your investigation?

A Well, I used many of the same techniques that we utilize for any geologic or engineering geologic investigation. I researched the information that was available, if there were any geologic reports, literature that pertained to lagoon systems, barrier beaches, barrier islands.

I examined U.S. topographic maps. I purchased four of various dates going back to the survey of 1894 which were available from the U.S. Geological Survey.

[*733] *I examined old photographs in the city attorney's office as well as old topographic surveys and compared those topographic maps with those maps in my possession.

Then I determined the trenching on either side of the waterway as shown on the maps that I had as Ballona Lagoon. This trenching would enable me to examine the subsurface.

The next step was contracting for a large backhoe to do the trenching. Then I made, during the trenching, quick sketches of every trench — very rough — took photographs, examined features, examined sampling, took representative samples to the laboratory for more detailed analysis and then I compared the results of these analyses with the results obtained from older unpublished reports on El Segundo dune sands and Hermosa Beach sands.

• • •

[*737] *Q Can you tell the court the nature of the trenches that were dug and how deep they were, how wide, how long.

A They varied in depth from five or six feet to perhaps nine feet deep. In width, from five and a half, six feet to perhaps 12 feet wide. They were usually longer along the street right-of-way than they were in width, limited again by the public right-of-way of the street. They were limited in some cases by the influx of water from the adjacent lagoon. Water did seep in from the lagoon into the bottom of the hole. Caving was another problem that caused widening of the hole at times.

Q Can you tell the court what the purpose of the trenching was.

A That was to examine the nature of the materials to see if there were observable amounts of fill on either side of the lagoon, or if these were natural sediments. That was the main purpose of the holes.

Q Did you extract samples of materials from the trenches?

A I did.

Q Did you analyze and study the samples that you obtained from the trenches?

A I did.

Q Did you, during the course of your investigation, have any radiocarbon data made of the material?

A I did.

Q Please continue, sir.

[*738] *A From hole number 10, there was an organic, rich substratum about four and a half, five feet down, that I took to UCLA, Dr. Ranier Berger, for analysis and age dating.

Q Did you receive the results of that radiocarbon dating, sir?

A I did.

Q What were the results of the tests done by Dr. Berger?

A Nine hundred ten years before the present, plus or minus 200 years.

Q Now, what did that date indicate to you, as to the origins of Ballona Lagoon?

A That indicated to me that that particular stratum was laid down 910 years ago, again plus or minus the discrepancy.

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[*739] *Q BY MR. PARRILLE: Mr. Richards, was the radiocarbon dating sample and the results of it of assistance to you in formulating your opinion as to the origins of Ballona Lagoon?

A Yes.

Q Did you undertake any other investigation to determine the origins of Ballona Lagoon?

A Yes, I have examined old maps and studied the literature pertaining to lagoons and lagunal systems and have compared that with the geomorphology, physiography as evidenced at the site, and coupled with the examination of the trenches themselves, the natural features that I saw, all of this was researched in the literature to see if I could come to a valid conclusion.

Q How many times have you seen Ballona Lagoon, Mr. Richards?

A Many times. The last time — many times.

Q May I ask when the last time was that you saw Ballona Lagoon?

A February 18, as I recall.

Q That would be 1975?

A 1975.

Q Have you consulted with other geologists, engineers, or persons familiar with geology in formulating
[*740] *your opinion?

A Yes.

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[*741] *Q Now, based upon your investigation, skill, experience, training and knowledge, have you formulated an opinion as to the origins of Ballona Lagoon?

A I have.

Q Now, sir, with the assistance of the charts that you have prepared, which are marked plaintiff's 69 through 75, can you tell us exactly what your opinion is as to the origin of Ballona Lagoon?

A Yes, starting with exhibit 69, commonly an offshore bar is created by wave action offshore and begins to migrate toward the beach on a gently sloping beach, such as the one offshore of Ballona wash, Ballona outwash plane.

Q Are you now referring to plaintiff's 69?

A I am.

Q Thank you.

Can you orient us as to what the chart depicts, please.

A This feature on the right side is the offshore bar forming beneath the surface of the ocean. It has been formed by wave action typically migrating toward the beach.

[*742] *Q Continue on, please.

A Now, I'd have to have exhibits B and C.

Exhibit B shows the barrier island as it has migrated farther toward shore and onto the marsh and some marshy deposits are showing up now on the shoreward side, marsh grass will be growing in the marsh.

Lagunal water would be forming under the bar because there would be a slight entrapment, although it would be connected to the ocean by openings in the

barrier island. Still, you have a rather quiet area here, protected from wave action.

So, marsh grass begins to grow. The finer grain sediments are deposited in this area of quiet water.

Next, exhibit No. 71 depicts the barrier island having migrated farther toward the marsh, a tidal creek is shown as an area still draining the marsh and coming from streams from the interior going out toward the ocean which drain through openings in the barrier island into the ocean.

At this time, I postulate a longshore bar being developed as a spit from the area toward the north. This is being created by longshore currents.

THE COURT: It's almost like stop-frame photography. What time interval from "A" to "B" and from "B" to "C"?

THE WITNESS: It could be as much as 40 years, maybe a hundred. There could be as little as 25 years. These longshore bars develop sometimes within a period of 25 years. So, for an unknown time.

[*743] *This, your Honor, is the age dating to get an idea of what time we are talking about that this formed.

THE COURT: No, did you form an opinion as to the length of the longshore bar? Do you have a profile?

Excuse me. I have a telephone call. We will take a recess until 10 minutes to 3, afternoon recess.

(Recess.)

[*744] *THE COURT: Would the reporter please read the last question and answer?

(Record read.)

THE WITNESS: Yes, your Honor. It is about three miles long, using the exhibit number 15.

THE COURT: Is that 15 appearing on the yellow slip in the lower left-hand corner?

THE WITNESS: Yes, on exhibit 15, the U.S. topographic map surveyed in 1894 shows the bar, at that time, to be approximately three miles long.

Now, as far as the time interval goes from the original tidal lagoon or marsh land to the time that this appears that we have here where there is a barrier island, which has migrated over the marsh quite a distance and the development of a longshore bar, could well be thousands of years. We have no way of knowing and this is why I asked for the age dating of some of the organic material in the sediments.

Now, exhibit D, which is exhibit No. 72 on the plaintiff's list of exhibits, shows Ballona Lagoon as it finally developed, with the lagoon between the first barrier island which has migrated over the marsh and the second barrier island which has developed as a longshore spit.

Now, if I might have the final exhibit No. 73 showing a cross section from the northeast to the southwest.

This is a diagrammatic sketch of the present day Ballona Lagoon, with the exception of the modern day improvements by man toward the northeast, which is constituted by the Marina Del Rey harbor.

[*745] *From my investigation of the trenches, I could see that there were natural deposits in the case of the northeast side, there was an old back beach soil deposit anywhere from six inches to a foot in thickness on the top.

Then, below that, was a medium grained grey sand with typical laminations of dark minerals, layers of dark minerals cross-bedded in places, parallel to the lagoon in places, dipping sometimes on either side parallel to the lagoon, but many times the slope of the laminations was toward the lagoon.

On this side — well, to continue, you have the zone 2, which is an old beach deposit as I postulated from examination of the laminations of dark minerals. The grain size, the size — the lack of frosting and pitting on the grains, which is typical of a blown sand, for instance, although there was some.

As we trenched downward, there were beginnings of a grayer, dark gray to greenish sand which had old plant remains in it, organic material. The farther down we got, the more organic it got to where I call zone 4, which appeared to be old lagunal muds, so this is why I postulated that this barrier island migrated over the old lagoon and marsh land and the fact that I found plant remains in this zone 3, below the zone 2 of the old beach deposit, led me to believe, also, that it migrated toward the northeast.

Now, as we go on the seaward side, you also have dark layers. You have very little soil zone. Maybe two inches,
[*746] sometimes as much as four inches. A little bit of *organic material, but very poorly developed. Sometimes there were amounts of man-made fill. This goes for both sides, but it is easily detected because it had construction debris in it. Below that you had, again, medium to fine grain sand with the winnowed dark laminations of the heavier minerals, and dark minerals usually indicate heavier minerals, so it was started out by wind action as the wind drifted over this longshore barrier island, carried toward the lagoon.

Of course, heavy winds would carry it completely across to the other side, so from examination of these dark laminations, from the grain size, and if we find that there are more frosting and pitting in evidence on this side of the lagoon, then that's typical of a windblown deposit without the cushioning effect of water.

So that examination, then, in the laboratory showed a sample here from this side to be very similar to a sample that I investigated back in 1952 of a blown sand at El Segundo. Very similar to the grain size, mineralogical content, the sorting, the frosting and pitting.

On this side examination of the old beach deposit in zone 2, what I call the old beach deposit of zone 2, was very similar to the sample of Hermosa Beach sand that I had examined back in 1952. Composition, the magnatite and kinetic composition of the heavy minerals were very similar to both cases. So, from that, I deduced that this side of the lagoon was of natural origin regardless of

when this first began to be formed. Thousands of years
[*747] ago or *maybe just a thousand, eleven hundred years ago. The age dating was very important, taken from this side of the lagoon, because it tells me that this old beach deposit came in over the old marsh and this one spot where I took the sample at hole 10, 910 years ago plus or minus 200.

So, it might have been 1110 years ago or 710 years ago. But I rather suspect that it is on the upper side.

[*748] *So, for that reason, I deduced that the lands on both sides of the lagoon and the lagoon itself are of natural origin and I heard Dr. Orme's testimony the other day. Again, I have no quarrel with him. I agree. It is of natural origin.

Q BY MR. PARRILLE: Mr. Richards, what facet of the investigation do you feel is most significant in reaching your opinion?

A The physical examination of the trenches.

Q Were the exhibits marked 69 through 74 prepared from charts that you yourself had sketched and drawn?

A Yes.

Q And were they blown up for courtroom purposes?

A Yes, they were.

Q Did you utilize these charts in assisting you in formulating your opinion?

A Yes, I did.

Q And do they represent the results of the trenching and your study of maps and photographs and other documents?

A Yes.

MR. PARRILLE: We offer into evidence plaintiff's 69 through 75 at this time, your Honor.

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[*750] *Q Mr. Richards, referring to plaintiff's 75 and the area colored in red upon which you did your study and made your investigation, have you formulated an opinion as to whether that area is in the same location as it was 1,000 years ago?

A I have.

Q What is your opinion?

A In my opinion, this portion of Ballona Lagoon is very much as it has existed for approximately 1,000 years.

THE COURT: By "this portion" are you referring to the portion that has been colored in red?

THE WITNESS: The portion colored in red, your Honor.

THE COURT: Well, that is the entire Ballona Lagoon; is that right?

THE WITNESS: It is the remnant, your Honor. The formerly existing Ballona Lagoon covered a much more extensive area. This is all that I confined my examination to because, in my opinion, this could definitely be shown and I proved to myself that this was a remnant of the original lagoon.

THE COURT: The question that was put to you, as I
[*751] *understood it, sir, was whether the portion on plaintiff's 75 which you have outlined in red had the same latitude, the same longitude at all of its points 1,000 years ago as it has today.

THE WITNESS: Yes, sir. This area in red has existed within those same boundaries, more or less —

THE COURT: For 1,000?

THE WITNESS: Yes.

THE COURT: 1500?

THE WITNESS: I would say 1100 years because of the age date.

THE COURT: 1102?

THE WITNESS: Yes. I have found that there is a little bit of spillage and my trenches showed a little bit of spillage came from one side where the winds had blown over this barrier island on the seaward side and had blown over and gone into the lagoon, covered up maybe two, two and a half feet or so into the lagoon.

THE COURT: Thank you.

Anything else, Mr. Parrille?

MR. PARRILLE: I have no further questions, your Honor.

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Trial Testimony of Earl Weisbaum

[*805] *EARL WEISBAUM,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

THE CLERK: Be seated and state your name, please.

THE WITNESS: Earl Weisbaum, W-e-i-s-b-a-u-m.

DIRECT EXAMINATION

BY MR. PARRILLE:

Q Mr. Weisbaum, can you state your occupation, please.

A I am Foreign Law Librarian at the County Law Library here in Los Angeles. I am also an attorney at law.

Q How long have you been the county foreign law
[*806] *Librarian?

A Since 1971 or 1972, I am not sure.

I was acting foreign law librarian beginning in 1971, and at some date when my predecessor fell ill and upon his subsequent death, I was made foreign law librarian.

THE COURT: Are you admitted to practice in the State of California?

THE WITNESS: Yes, sir.

THE COURT: When were you so admitted?

THE WITNESS: January of 1971.

THE COURT: Are you admitted to practice in any other jurisdiction?

THE WITNESS: No, just the state and federal courts in California.

THE COURT: Thank you.

You may proceed, Mr. Parrille.

MR. PARRILLE: Thank you, your Honor.

Q Can you describe your educational background, Mr. Weisbaum.

A My legal education, you are referring to?

Q Yes, sir.

A I am a graduate of Loyola Law School in Los Angeles, graduating in June of 1970.

Q Can you describe your educational background prior to law school.

A Well, I graduated from Cal State College here in Los Angeles, and also from the University of Southern California School of Library Science in 1971.

[*807] *Q Are you a member —

A I am sorry, 1961.

Q Are you a member of any honorary societies or associations?

A I am a member of the American Association of Law Libraries, International Association of Law Libraries, Foreign Law Association, and Beta Phi Mu, which is an honor society for librarians.

Q Have you been employed by any other library or any other law library in the State of California?

A No, I have worked only at the L.A. County Law Library.

Q Do you speak any foreign languages?

A I can read Spanish and French, plus I have some knowledge of other foreign languages sufficient to handle and select books for the foreign collection.

Q Have you written any articles on international law?

A I wrote an article on the Hague convention for Service of Process Abroad, which was published in the L. A. Bar Bulletin, I think, in 1972 or 1973, I can't recall now. Plus an article on Territorial Waters that appeared in the "Lawyer of the Americas".

[*808] *Q Have you instructed any courses in law?

A Yes, I am on the faculty at Mid-Valley College of Law, where I teach Conflict of Laws, and Legal Bibliography.

Q Have you lectured or given any seminars on foreign law?

A I have not lectured, but I am chairing a symposium on Mexican Law that will be held here in Los Angeles in June of this year at the Convention of the American Association of Law Libraries.

Q Where will the symposium be held?

A At the Century Plaza Hotel.

Q Have you been employed to advise or consult with any person on foreign law?

A Yes, I have prepared memoranda for attorneys in the Southern California area, and I have appeared as a witness in the superior courts of Los Angeles, Orange, and San Bernardino Counties in matters involving foreign law.

Q Have you been employed to advise or consult anyone on Mexican law?

A Certainly. I have testified in those superior courts on Mexican law.

I have prepared a memorandum for the Division of Highways in the State of California about two years ago, concerning Mexican water law.

Q Is it safe to say you have researched and studied textbooks and other material regarding the history of Mexican law and Spanish law?

[*809] *A Yes, I have done such research.

Q Have you had such research and study into the history of Mexican water law?

A Yes.

Q Has your study into the textbooks and articles concerned Mexican water law in force during the period of time when Mexico was a sovereign state?

A Yes, but Mexico is still a sovereign state. You mean when Mexico was a sovereign in this part of the United States?

Q Yes, sir.

A Then the answer is yes.

Q Have you studied Mexican water rights laws in force during the 19th Century?

A Yes.

Q Can you give us a sampling of the books of reference you have studied or reveiwed as to Mexican water laws?

A Well, there are a number of well-known titles that go back to old Spanish law. Las Siete Partidas is one. That was called the Recopilacion —

THE COURT: Would you give us the spelling of each of the books that you will be reciting, books that have Spanish titles.

THE WITNESS: Yes. Las Siete Partidas, L-a-s, S-i-e-t-e, P-a-r-t-i-d-a-s.

The second title I mentioned is Recopilacion, R-e-c-o-p-i-l-a-c-i-o-n, d-e, l-a-s, L-e-y-e-s d-e l-o-s R-e-y-n-o-s d-e l-a-s I-n-d-i-a-s.

[*810] *THE COURT: Thank you.

Have you concluded your answer, sir?

THE WITNESS: I am sorry.

There are works by authors in the English language.

Hamilton is one author.

Rockwell is another.

White, another.

Professor Scott has translated Las Siete Partidas and I have consulted his translation and in Spanish there is a writer named Escriche.

Another one named Galvan.

And that's all that comes to mind at the moment.

Q BY MR. PARRILLE: And do you keep current in changes in Mexican law, Mexican codes?

A Well, Mexico is a Federal Republic like the United States and there are now 33 states so I don't keep up with all of it. I try to keep up with Federal Mexican Law and some of the law of other states like Baja California.

Q Mr. Weisbaum, in 1848 was there any codification of laws utilized by the Mexican Government in California?

A Well, the main collection of laws was the Recopilacion that I spelled out before and that was the law applied in the Spanish colonies and continued in Mexico.

Q And that law governed the rights of private persons and the public in California?

A Yes.

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[*816] *Q BY MR. PARRILLE: Prior to or on or about 1848, do you have an opinion as to what the Mexican law as to water rights or the rights of the public to use navigable waters in California?

A Yes.

Q What is your opinion?

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[*818] *THE WITNESS: It is my opinion that prior to 1848 in what is now the State of California that was, at that time, part of the Republic of Mexico, that navigable waters were subject to public use.

Q BY MR. PARRILLE: Now, when you say the navigable waters were subject to public use can you expand on the meaning of that?

THE COURT: Excuse me. I don't believe that you have recited the witness' testimony correctly, Mr. Parrille. I believe the witness testified that prior to 1848 in what is now the State of California, navigable waters were subject to public use.

MR. PARRILLE: I believe that's what he stated.

THE COURT: You said "a public use."

MR. PARRILLE: I apologize. I meant to say "to public use."

Q Can you amplify upon your statement as to the meaning of the navigable waters being subject to public use?

A Navigable waters were property or belonged to the sovereign under Mexican law and Spanish law that preceded it and, as was stated in many of the riders concerning water law, the navigable waters are common, that is, available to the public to use.

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[*824] *Q BY MR. PARRILLE: Mr. Weisbaum, are you familiar with Part III, Title XXVIII, Law 6 of Las Siete Partidas?

A Yes.

Q In substance, can you tell us what the law says?

MR. BITTING: I will object to that, your Honor. The law is the best evidence of what it is.

THE COURT: The objection is sustained.

Q BY MR. PARRILLE: I show you plaintiff's 5 for identification, Mr. Weisbaum, referring specifically to that portion dealing with Law 6 of Las Siete Partidas, Part III, Title XXVIII, and ask you if you recognize the translation which appears therein?

A Yes, I do recognize it.

Q Can you read it, sir?

A Law 6:

"Every man has a right to make use of harbors, rivers and highways. Rivers, harbors and public highways belong to all persons in common so that parties from
[*825] foreign countries *can make use of them just as those who

live or dwell in the country where they are situated and although the banks of rivers are, so far as their ownership is concerned, the property of those whose lands include them, nevertheless, every man has a right to use them by mooring vessels to the trees, by repairing his ships and his sails upon them and by landing his merchandise there and fishermen have the right to deposit their fish and sell them and dry their nets there and to use said banks for every other purpose like these which appertain to the calling and the trade by which they live."

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[*833] *THE COURT:

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[*834] *Now, the pending question, Mr. Weisbaum, is this: — If you understand it, please answer. If you don't understand the question, indicate that you don't understand it — was Law 6 of Part III of Title XXVIII of Las Siete Partidas a part of the general laws in effect in California in 1848?

THE WITNESS: It is my opinion that it was in effect here in 1848 or prior to 1848.

THE COURT: Your answer is: "In my opinion Las Siete Partidas were a part of the general laws in effect in California in 1848"; is that your answer, sir?

THE WITNESS: Yes, that is my answer.

Can I comment further?

THE COURT: Yes, sir.

THE WITNESS: Las Siete Partidas was said to be of the highest authority by American writers on Mexican and Spanish law as recently as 1851. Schmidt so stated in his work and other writers and it's been like, I understand, litigated in California and elsewhere that it was part of the law in Mexico and therefore, in California, when California was part of Mexico.

THE COURT: When did it become the law in Mexico, whose geographical boundaries we are familiar with today?

THE WITNESS: It was made applicable to the Spanish colonies by the Recopilacion de las Leyes de los reynos de las Indias, and that was as early as the 16th Century, and re-ratified, I think, as late as 1805.

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[*838] *BY MR. PARRILLE:

Q Yesterday you testified that under Mexican law in force prior to 1848 the navigable waters were available for public use; is that correct?

A Yes.

MR. BITTING: I object to that. His testimony is contained in the record.

THE COURT: Will the reporter please read the question that was just answered?

(Question read.)

THE COURT: The objection is overruled.

[*839] Q BY MR. PARRILE: In your opinion, Mr. Weisbaum, *under the laws of Mexico in force prior to 1848 in California would the public have the right to use navigable waters located on private property for navigational purposes?

A Yes.

MR. PARRILLE: I have no further questions.

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Trial Testimony of Federico Laffan

[*1008] *FEDERICO LAFFAN,

called as a witness on behalf of Defendant Summa Corporation, having been first duly sworn, was examined and testified as follows:

THE CLERK: State your full name and spell your last name for the record.

THE WITNESS: My name is Federico, F-e-d-e-r-i-c-o Laffan, L-a-f-f-a-n.

DIRECT EXAMINATION

BY MR. BITTING:

Q What is your occupation, Mr. Laffan?

A I am an attorney at law.

Q And where is your residence?

A In the City of Mexico in the Republic of Mexico.

Q Do you maintain offices in Mexico City?

A I do maintain law offices in Mexico City, yes.

Q How long have you maintained those law offices in
[*1009] *Mexico City?

A In junior association with others and in senior association, 16, 17 years.

Q And is there a firm of which you are presently a member?

A Yes.

Q Would you tell us the name of that firm.

A The name is Deregil, Laffan y Igartua.

Q Are you a partner in that law firm?

A I am.

Q Now, Mr. Laffan, did you attend a law school?

A Where?

Q No; I said did you attend a law school.

A I did attend a law school.

Q Which law school did you attend?

A I attended two law schools. I attended the University of Texas Law School in Austin, Texas and I attended the National University of Mexico Law School in the City of Mexico.

*1010] *Q Did you obtain a degree from the University of Texas Law School?

A I did. I have an LLB from the University of Texas Law School.

Q When did you obtain that?

A 1958.

Q Did you obtain a degree from the National University of Mexico?

A Yes, I obtained the equivalent of an LLB from the National University of Mexico Law School in 19— between 1963 and 1965. I can't recall at the moment. I think the formal act of obtaining the degree was 1965, involved a professional exam.

Q Did you practice law while you were attending the National University of Mexico?

A Yes, I practiced law while attending law school.

Q What was the name of the firm you worked with while you were attending law school at the National University of Mexico?

A I worked with a firm called Goodrich, Dalton, Little & Riquelme, in Mexico City.

Q Now, Mr. Laffan, have you had occasion to lecture at any universities?

A Yes, I have had occasion to lecture at law schools in the United States. Law school of the University of California at Los Angeles. The law school of the University of Houston in Houston. The law school of the University of St. Mary's in San Antonio, Texas.

[*1011] *Q What were the subject matters of those lectures at the law school?

A Basically, comparative law in matters concerning commercial — concerning commercial matters.

Q Now, were these one-time lectures, or were they classroom situations that extended for a period of time?

A In each case they were lecture programs of several days, ranging from ten days to a month for credit for the students attending.

Q Now, in the past 14 to 15 years, have you specialized in any particular area of law as it pertains to the Republic of Mexico?

A I have done a substantial amount of my work in the fields of real estate development, real estate and necessarily the attendant real estate laws. The financing of real estate development and general corporate work.

Q Are you duly licensed by the Government of Mexico to practice law in Mexico City?

A I am.

Q Are you licensed to practice law in the United States in any one of its states?

A I am not.

Q Could you identify some of the types of transactions in which you have been engaged as a lawyer over, say, the last ten years, to perform work in the Republic of Mexico?

[*1012] A In the acquisition of real estate, title search, *title litigations, the administrative law attendant to the development of real estate, especially in the lines of multiple housing and in the lines of resort hotels, condominiums, villas, on the coast and inland.

[*1013] *Q Have you performed legal work for U.S. based companies doing business in the Republic of Mexico?

A Yes, I have.

Q Could you identify some of the U.S. companies for whom you have performed legal work over the last 10 years?

A I have performed all or some of the work which I described to you in a preceding question in connection with real estate for IBEC Corporation, International Basic Economy Corporation, and for Princess Properties International, which is a Bermuda based corporation, actually of American interests.

Q Who is the principal behind Princess Properties?

A It's a gentleman called Daniel K. Ludwig.

Q Please continue. I interrupted you.

THE COURT: Excuse me. Would you spell the name Ludwig.

THE WITNESS: L-u-d-w-i-g.

Q BY MR. BITTING: My question, I believe, that you were answering when I interrupted you was identify some of the American companies or the U.S. companies for whom you have performed work over the last 10 years.

A I can add IBEC is a Rockefeller family interest. Specifically, Nelson Rockefeller.

Q Now, Mr. Laffan, when were you hired in connection with your work in this case?

A Sometime in the month of January of this year.

Q And in connection with the engagement of your services as a lawyer what were you asked to do?

A I was asked to determine, under the law applicable during the period of 1839 through 1848, what were the [1014] public *rights in a body of water within a Mexican Government grant of land in California.

I was also asked to acquaint myself and determine — I would like to strike that out or restate my answer, if you will allow me, or simply correct it, whatever your procedure is.

THE COURT: You may proceed to correct your answer.

THE WITNESS: The answer is: To acquaint myself with what is referred to as the expediente of the Rancho Ballona grant and wherein is contained the transcript of the grant and the transcript of the deed of juridical possession of the lands involved in this grant and to determine what the legal significance and the basis for the juridical possession procedures is as they were related to the grant under the law applicable at the time, meaning 1839, 1840.

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[*1027] *THE COURT: The witness testified he was hired in this case in January of 1975 with respect to an investigation of Mexican law for the period 1839 through 1848, as to public rights in a body of water with in a Mexican grant of land in California. I don't quote him verbatim.

Q BY MR. BITTING: Had you finished your answer to the question, Mr. Laffan?

A Yes, I had.

Q Now, would you briefly outline the steps you took in attempting to find answers to those questions posed to you.

A I obtained from Mr. Bitting copies of the expediente, in order to review the grant, a transcript of Juridical possession of the land covered by the grant, and the related administrative and judicial proceedings.

[*1028] *I then proceeded to study, as a Mexican juris-consultant would in the period of 1839 through 1848 and as it would be done today. I determined that in this discipline the body of law applicable in its order of applicability would be the construction, legislative and executive provisions, meaning statutes, regulations, decrees, ordinances; thirdly, doctrine, which means commentators; jurisprudence, which means court rulings or judicial decisions; and finally, custom.

The research for court rulings was done by lawyers who were my assistants and was not done personally by myself. The rest of this body of law and order of applicability was studied by myself directly.

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[1029] *Q Was the Constitution of 1843, together with its amendments of 1847, of assistance to you in performing your research with respect to the questions posited?

A Directly not, although it contains a couple of rules of general application in the sense that all of these Constitutions confirm the right of private property and, [1030] *two, the right of eminent domain, meaning the right of the sovereign to expropriate for public use or for the public interest in exchange for fair payment previously done, for prior payment. And also the general statement in all these that such a procedure with such a compensation was necessary in order to disturb a person in his possession, use or enjoyment of private property.

All of these also recognized the principle of no retroactivity, meaning that whatever these bodies of law represented as new law would not be applied retroactively. Otherwise, I found no direct rules which would determine the issues that I was asked to study.

Q Was the Constitution of 1836 of additional assistance to you in answering the questions posed?

A I have answered my last question in reference to the three Constitutions spoken of before. That's the Constitution of 1824, of 1836, and 1843.

• • •

[1036] *Q Now, what was the next step in your research to determine the answers to the questions posed to you by my office?

A Having followed the analytical disciplines through the years 1821 through the date of 1848, which interested [1037] us with regard to the Mexican body of law, we *then concluded that applicable on a suppletory basis to the Mexi-

can nation or within the Mexican nation at that time were the laws of the Indies, or shall we call it generally the Spanish colonial laws applicable to this part of the world, and these laws in turn by special provision of one of its statutory manifestations, in turn, made suppletory the laws of Spain in a stated hierarchy, also to the time in question and the laws in question.

Q When you use the word "suppletory", what do you mean by your use of that word?

THE COURT: Before you answer the question, would you be good enough to spell the word "suppletory".

THE WITNESS: S-u-p-p-l-e-t-o-r-y.

Suppletory, I understand, is also a concept of science of law in general, universally, and I understand it to mean that where an existing law contains a lagoon or — lagoon is the word used, and does not provide a rule, or does not define sufficiently a rule of law, the consultant then applies another law, usually of a lesser hierarchy in structure, that is, relationship, for example, of a regulation to a statute, but also historically chronologically in the sense of immediately preceding applicable laws, and this is why the term "suppletory" was used in applying Spanish law to the laws of the Indies and, in turn, as a matter of fact, not as a matter of promulgation to the Mexican period of 1821 through 1848.

[*1038] *Q Now, I believe you referred to the Indies, Mr. Laffan; which geographical area did you include within the Indies in your answer?

A The Indies in question and to which our study was directed were, specifically, the viceroyalty of New Spain which included the territories of the Californias which, in turn, includes the County of Los Angeles as it is known today.

Q By "New Spain" was that the term used by the Spanish or what is now the Republic of Mexico?

A The official title of the area from Central America way up to Oregon and other midwestern states of the United States and Texas.

Q Including Alta California?

A Including Alta California.

Q As opposed to Baja California?

A It also included Baja California.

Q And we are now situated in what was formerly known as Alta California prior to 1848?

A Yes.

Q All right. What did your research indicate to you into Spanish law as it may apply to the period, 1821 through 1848?

A I applied the same discipline which I described in one of my first replies. That is to say, addressing myself or searching for constitutional law, statutory provisions, decrees, ordinances, doctrine, jurisprudence and custom.

And in this connection I determined that the Spanish Constitution of 1812 was applied, was applicable in
[*1039] *Mexico between the periods of 1812 and 1821 and, therefore, constituted a suppletory law in the field of constitutional law during the period in question.

And this constitution contains the same general rules of guarantee of private property, indemnification, otherwise, no direct rules concerning the description of lands and waters such as we have in question.

Prior to 1812, incidentally, constitutions did not exist in the Hispanic world. That is to say, none that were promulgated.

So from constitutions we addressed ourselves to laws, regulations, decrees, et cetera and in the order of hierarchy, found what is known as the Recopilacion de Leyes de Indias, R-e-c-o-p-i-l-a-c-i-o-n, d-e, L-e-y-e-s, d-e, I-n-d-i-a-s, the original version of which was promulgated in 1680 and which was published in the last edition in the year of 1791, substantially unchanged, and, incidentally, containing over 6,000 rules of law specifically applicable to the Indies.

This body of law, in book 2, stated that the suppletory laws of the Laws of the Indies would be a series of Spanish laws dating back from late 1700 to 1348, which is the date of promulgation of the Spanish body of law known as the Siete Partidas.

The Recopilacion de Leyes de Indias or Laws of the Indies which I was spelling the name of to you a minute ago contains no provisions which are applicable on the assigned questions and the suppletory Spanish laws
[*1040] which I referred to *in the answer to this same question were also silent until we get to the law of the Siete Partidas of 1348.

The law of the Siete Partidas, which is, in its greater part a reproduction of Roman law and, in its smaller part, of medieval law and local custom. That is to say, statements of rules which were local custom, and contains rules or the rules which are directly applicable to the case in question.

Q Then, I take it, Mr. Laffan, you found nothing in the Spanish Constitution of 1812 directly applicable to the question?

A That is correct.

Q And, I take it, you found nothing in any legislative act that dealt directly with the question?

A That is incorrect to the extent that within the laws which were especially promulgated for the Indies ordinances of the viceroys which obtained pursuant to law, the latter ratification by the kings of Spain were promulgated. These were ordinances dealing directly with lands and waters, rights of individuals to lands and waters, how they were to acquire them, what would be the relation to the state and to other citizens.

THE COURT: Have you completed your answer?

THE WITNESS: Yes.

THE COURT: Before we take our recess may I ask you this, Mr. Laffan: In sum, does your testimony, to this moment, indicate that in order for you to answer

the question as to the public's rights in a body of water
[*1041] within a Mexican grant of *land in California between 1839 through 1848 that the answer lies in Las Siete Partidas?

THE WITNESS: Yes.

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[*1044] *Q BY MR. BITTING: Now, I believe, Mr. Laffan, you stated that the first reference you found that was directly applicable to the issues presented to you for research was in Las Siete Partidas?

A That is correct.

Q What particular references in Las Siete Partidas do you have reference to?

A The third law of Title XXVIII of the third Partida
[*1045] *and the sixth law, Title XXVIII of the third Partida.

Q And did you have the third law in English translation, sir?

A Yes, I do. I have an English translation here which I understand —

Q Has been marked as an exhibit?

A Yes, and which I have compared with the text of the Siete Partidas as I have found transcribed in the commentaries and which compares favorably.

THE COURT: Counsel are at the witness' side; will counsel indicate whether the witness is referring to plaintiff's 4 for identification.

MR. BITTING: No, your Honor. It is not plaintiff's 4. It is our copy. I believe it is plaintiff's 5 that I directed the witness' attention to.

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[*1049] *THE COURT: Is it your testimony that plaintiff's 5 contains not only a translation of the third law of Title XXVIII of the third Partida but, as well, the sixth law

of Title XXVIII of the third Partida; is that your testimony?

THE WITNESS: That is correct, sir.

Q BY MR. BITTING: Now, Mr. Laffan, based upon your research and your investigation have you formed an opinion as to the categories of waterways in which the public had an interest in the period 1821 to 1848?

A Yes, I have. By reading the statute —

Q Excuse me. I haven't asked you the question yet. What is your opinion with respect to that?

A My opinion is derived from the text of the statutes and laws 3 and 6 and from the commentators which I have studied who commented on these two laws.

The conclusion is that, according to these laws, the public had a property interest in the sea, seashore and in the rivers which, according to the commentators, definitely refers to running waters, to the ports and to the public roads and, as a property right is involved, therefore, the right of using these.

Additionally, the banks of rivers which were not public property but were private property were subject to a use of their banks by the public.

I am afraid I forgot the full content of your question; could I hear the question again.

MR. BITTING: I believe you have answered it but we [*1050] can *have it read again.

THE COURT: Will the reporter be good enough to read the last question put to the witness by Mr. Bitting?

(Question read.)

THE COURT: The reporter has now read the question put to you by Mr. Bitting and do you feel that you have answered that question?

THE WITNESS: Yes, I do. I have referred to those bodies of waters in which the public had an interest.

Q BY MR. BITTING: Now, turning to the second question posed to you, Mr. Laffan, what investigation did you make with reference to juridical possession?

A I studied the deed of juridical possession which recites the judicial procedure followed by a judge in order to determine the boundaries of the grant, physically, and in order to determine that there was no third party, whether individual or state interest, apparent within the pretended boundaries described by the grant and found in the judicial proceeding of walking the boundaries.

THE COURT: Have you completed your answer, sir — I will have the reporter read the last question and the answer thus far given by you and after you will have heard the question and the answer thus far given by you will you indicate whether you have completed your answer or whether you decide to add to it.

Will the reporter please do so?

(Record read.)

[*1051] THE WITNESS: Additionally, I referred to the ordinances *of the viceroys of the Indies, the first of which was dated 1536 through the 16th Century — the remaining — in order to compare the proceeding as to its due course.

The ordinances clearly indicate the formula which is to be followed by a judge in determining — or in performing the juridical possession act which I have just referred to. This involved, in detail, the convocation of all neighbors with their title instruments in hand, the presence of the court secretary, the presence of three witnesses, the distribution of the work to be performed among the neighbors and the witnesses who would hold the measuring cords, the poles, who would ride astride a horse and perform the physical review with the judge, in detail such as, in fact, the preparation of the cord which was to be used for the measurement and which was measured pursuant to a vara which was a Mexican measurement, Spanish-Mexican measurement, on the basis of its existence somewhere in the City Hall and with the use of this cord the parties proceeded to go through the

boundaries, listen to whatever each of the neighbors might claim with regard to any contest of these boundaries and review, as they marched along the grant, the legal grant of title to see that, in fact, it matched what was resulting from this deed of juridical possession.

[*1052] *I might explain that in Roman systems of law possession cannot be had by mere title. A man cannot take possession without a judicial order entitling him to take that possession; therefore, the grant by the Governor of the Department of the Californias, pursuant to the decree of colonization was not what you might describe as a complete acquisition of title, but that additionally a formal act which was recorded and inscribed in the public records and became part of a formal deed with the witnesses signing thereto has to be performed such as I have described.

The deed of juridical possession in the case of Rancho Ballona, as I have read it, follows in fact the various ordinances which since 1536 instructed how this deed was to be performed, how this act of juridical possession was to be performed.

THE COURT: Have you completed your answer, sir?

THE WITNESS: Well, I might add that my references to the ordinances in the book referred to by me previously as having been written by Mariano Galvan.

THE COURT: Have you completed your answer?

THE WITNESS: No. I might state that this is a book which restates various ordinances concerning the act of juridical possession and general provisions of these ordinances with regard to general rules to be observed by the authority, by the judicial authority involved in performing the act of juridical possession.

THE COURT: Would you once again state the title of Galvan's book.

[*1053] *THE WITNESS: The book is called "Ordenanzas de Tierras Y Aguas".

THE COURT: Have you now completed your answer to the question?

THE WITNESS: Yes, I have. I think I have.

Q BY MR. BITTING: Mr. Laffan, when you referred to the juridical procedure, what did you refer to?

A I referred to copies of an instrument that were given to me by Mr. Bitting and which are entitled — which is entitled "Transcript of the Proceedings in Case No. 69".

Q I believe it is 369.

A Sorry. 369.

And which contain the deed of grant, La Ballona, the deed of juridical possession and a transcription of various judicial and executive administrative acts concerning the existence of the land, concerning the freedom from third party claims, orders for the judge to perform a deed of juridical possession.

Q Mr. Laffan, did you compare the materials furnished to you by my office with plaintiff's exhibit 1, with the exception that there is a transmittal letter dated August 23rd, 1966?

A The answer is no, I did not compare it. I haven't had the opportunity to do that.

THE COURT: Let the record reflect that the witness appears to be taking advantage presently of the opportunity to make the comparison. Am I correct, sir?

[*1054] THE WITNESS: That is correct, except as to page 14 *which is missing from the copy that I was given, and which I have read previously this morning in this courtroom.

Q BY MR. BITTING: With reference to plaintiff's exhibit 1, is there any material on page 14 which was of additional assistance to you in your research, Mr. Laffan?

A Yes, it contains language which has to do directly with my confirmation as to the orthodoxy with which the act of juridical possession was performed and, specifically, it contains a directive by the governor to the judge and I, of course, have referred to the Spanish. I understand there are official English translations in this exhibit.

THE COURT: By "this exhibit", you are referring to plaintiff's 1?

THE WITNESS: Yes, sir, plaintiff's 1.

THE COURT: Continue.

THE WITNESS: And the specific reference is to this directive by the governor to the judge who should give possession to measure the lands pursuant to the ordinance and that any excess, any left over which may result, shall be for the nation for its convenient use. That is the one interesting content that I found.

It is further confirmatory of the orthodoxy with which the act of juridical possession was instructed to be done.

Q BY MR. BITTING: With the exception of page 14, Mr. Laffan, have you had an opportunity to compare
[*1055] *plaintiff's exhibit 1 with the materials furnished to you by my office?

A Yes, I read the content in English and in Spanish. The English which is contained in this copy of the expediente.

Q The materials furnished to you contain, according to the document, 64 pages and plaintiff's exhibit 1 contains 96 pages, so I take it with that additional exception you have not reviewed anything after page 64 in plaintiff's exhibit 1.

A No. I have not, and I will say that I felt no need to do so, because chronologically the copy that's been given to me contains the documents of the expediente which I understand to be the documents filed by Messrs. Machado and Sepulveda in court in order to establish or to confirm their claims under United States law, and these pages which I have take the reader through the point beyond the period, as I say, of documents, beyond the period of 1848.

I would presume that anything after that in this file has to do with American procedures related to the expediente.

Q Now, you reviewed the transcript of the proceedings furnished to you by my office.

Did you determine from the review of those materials that the procedure for juridical possession had been followed according to the ordinances which you found during
[*1056] the course of your research with respect to the *laying out of boundary lines for rural property?

A Yes, the act of juridical possession, according to the transcript of the deed, was performed according to the ordinances.

[*1057] *Q Now, what body promulgated the ordinances which you have referred to?

A The ordinances are the product of the viceroy who was the representative of the sovereign in the Indies and were thereafter ratified by the king, thus perfecting their promulgation and confirming the acts that were done pursuant to them.

Q Were there any particular ordinances which were of assistance to you in performing the work in connection with your testimony here?

A Well, I found directly related and of interest that in the ordinances and among the general rules which the ordinances contained as instructive of how the deed of juridical possession should be performed and what were the pursuits of the act of juridical possession, I find in quotation in the Galvan book that I have referred to earlier of a statute 2d, it is called, which states, literally, no person, notwithstanding the antiquity of his grant, may, by virtue thereof, take possession, measure or mark these territorial properties if this is not done with judicial authority and convocation of all neighbors for anything to the contrary shall be null and without effect.

Q Are you translating from Spanish?

A I am translating literally.

Now, I also found a rule 8 which states as follows:

"If the grant of lands be made to the shores of the sea, of a river or a large lagoon, the boundaries of

[*1058] said lands shall be *as of said shores and it shall be from these that the measurements shall be thrown and initiated", which I have interpreted to mean that measurements should not include sea, river or large lagoon.

Q Were there any other rules which were of assistance to you in performing your work, Mr. Laffan, in the ordinances?

A No.

Q Now, were these rules that you have just interpreted rules which were to be followed by the judge who took part in the deed of juridical posession in the case of Augustin Machado?

A Would you please repeat the question?

THE COURT: Will the reporter please read the pending question?

(Question read.)

THE WITNESS: That is correct, and in that respect, if I may, I will cite another rule which helps to answer this question.

Among the general rules of instruction is rule 11 which says — which, if I may, I will paraphrase because it is very long but if you will allow me to paraphrase a translation through it — the instruction is that before initiating any measurement of land, information as to the identity and oath shall be taken of witnesses and the parties concerned shall be present at the land which is expressed in the grants. They shall see it. They shall recognize it by its signs and shall testify as to the distances and as to the jurisdiction that it lies in and as to everything else that meets the eyes.

[*1059] *Having compared these signs with those contained in the title, the judge and the scrivener — secretary of the court — the court clerk — shall proceed to measure as hereinafter set forth.

And then the author, in fact, abbreviates the procedure but, in fact, states the procedure which is substantially

that followed in the act of juridical possession of the Rancho Ballona as it appears in the deed and this is the procedure to which I referred to in answering an earlier question. Measurement. Cords. The manner in which the physical walking of the boundaries was performed.

[*1060] *Q And, I take it, based upon your investigation and your review of the transcript in the matter of Augustin Machado, did you reach an opinion as to whether or not the ordinances relating to juridical possession were followed in the case of the grant by the Governor of California to Machado?

A Everything indicates that the ordinances were followed. The correct number of witnesses and the substantial acts required by the ordinances appears transcribed in the deed of juridical possession.

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CROSS-EXAMINATION

BY MR. PARRILLE:

Q Mr. Laffan, in discussing Rule 8 of the Galvan book, you indicated that the measurements did not include "large lagoon."

By that, sir, what do you mean, or what was your understanding of what was meant at that time?

A Well, my understanding, of course, would have to be subject to the general laws applicable to lands and waters and which were in effect, the rules of law of the Siete Partidas as we have referred to them, as I have

[*1061] *referred to them earlier. Rule 3 and Rule 6.

See if I can help you. I would interpret that the expression "large lagoon" was perhaps somewhat gratuitous in the sense that it was not defined or clarified and that certainly ran outside what was the clear law of the Siete Partidas that individuals could not own the sea, the seashore, running rivers, ports, and the roads of the nation.

Q I am not sure if I still understand what the meaning of the term "large lagoon" would be. Can you frame it in such a way or has your research indicated what the term "large lagoon" would be?

A I would have to say no. I would say that my ability to interpret the phrase, even in Spanish, of that era, called "large lagoon" is probably no better qualified than yours from a geographical point of view.

From a legal point of view, I would be forced to think that the author is referring to a lagoon which is navigable and which has an access from without the properties of the grant. This would be my legal interpretation of the phrase under the laws applicable at the time.

Needless to say, I have found no commentators on the detailed phrase "large lagoon" as quoted by Galvan from the corresponding ordinances.

Q Is it true, sir, under Las Siete Partidas, that certain surface waters belonged to the people or the public?

A Yes, that is correct.

Q Would that be true if those waters were lying
[*1062] *over private lands?

A I cannot answer your question, because it does not fall within my understanding of what the law is.

The law of Siete Partidas is the applicable law. The rules of law 3 and law 6 that we have referred to are specifically the rules which are applicable. These rules state compounded that the public owns the sea, seashore, running rivers, with regard to water. I suppose — and the ports. Okay.

Which, incidentally, is substantially the same rule as existed in Roman law. Anything else than that which is expressed in those laws was the subject of private property, because it was certainly the general rule of law in the period from the date of the Siete Partidas to 1848, that what the sovereign did not reserve for itself in its laws for itself, belonged to individuals, and the reservation ex-

pressed which is made in the laws is the sea, the rivers that run and the bays, ports.

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[*1080] *Q Can the public own waters over private lands under Las Siete Partidas in California in the 1830's?

A The answer to that question would have to be no because under the applicable law, which is the Las Siete Partidas, the public owned only the sea, the harbors and the running rivers and to the extent that you can put a sea or a harbor or running river in a private land, the answer to your question might still not make any sense because that would not be included in private land, these bodies.

An individual could have never have acquired title to such bodies of water.

Q Assuming a lake such as in Mexico City, under the laws in effect in 1830 in California, would the waters have been public waters?

A Enclosed in a man's property?

Q Yes, sir.

A I repeat again the rules are that the public owns the sea, the bays and the running waters. Lakes would not be included in such description.

[*1081] The law is limited in the sense that what the *public owns is what the law expresses. Nothing else does it own.

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Q Sir, under the law in force in Mexico in 1839, if lands were covered and uncovered daily by the tide water of the Pacific Ocean, who would own those tidelands?

A As the Siete Partidas state, if they are the shore of the sea the public owns the shore of the sea.

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[*1084] *Q Under Las Siete Partidas, what were some of the servitudes that the public had in private lands?

A I have not acquainted myself with detailed provisions of that law with regard to servitudes. I have assumed that they include those that we know today and, in fact, otherwise, I know as a matter of law, existed at the time in the 1800's, which is the right to transit and perhaps the right to take water therefrom or perhaps the right to remove sand, this sort of a servitude. The right to transmit water over it through an aqueduct, and we would have to say that the uses that are set up in law 6 might also be described as servitudes, fall into servitudes, that is to say that the river banks would be subject to the use by the public as described in law 6, where they could debark and lay their fish out and rest or trade or dry their sales, or whatever. This would be considered a servitude.

[*1085] *Q You have read the expediente, I believe; is that correct?

A Yes, I have.

Q In the expediente, Governor Alvarado granted Rancho Ballona to the Talamantes and Machados without prejudice to enclosing the traversing roads and servitudes. What does that mean to you?

A Well, it represents an expression of art which appears in deeds of conveyance even today, where rights of the public are saved in the conveyance of large tracts of land by the authorities.

That is to say, there may have been expressly constituted rights of traverse on this land or such right and which at the time may not be known to the governor as he is writing this thing, so he is saving his ignorance.

Q If I understand your testimony, then, it would be possible for a right in the public to exist which would not be specifically spelled out by the governor.

A This is correct.

Q Could a servitude in Mexican law apply to the waters affected by the tides.

A I can't answer that question, because I am not especially acquainted at this time with water rights, and I understood your question to be addressed to water.

Q Yes, sir.

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*1087] *REDIRECT EXAMINATION

BY MR. BITTING:

Q Mr. Laffan, in 1839 would a body of water subject to public uses be included within the boundaries of a grant of land from the Mexican sovereign to a Mexican citizen?

A No.

Q What are the reasons for that answer?

A Because the applicable law which is the Las Siete Partidas states very clearly and in a limited way that running bodies of water, bays, the sea, are not subject of private domain. That is to say that they are of the public domain, with the implication — if I may add — that the sovereign has no power to convey a property interest in such bodies of water.

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